No. 01-631

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

CHRISTOPHER DRAYTON AND CLIFTON BROWN, JR.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

JOINT APPENDIX

THEODORE B. OLSON*
Solicitor General
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

**Counsel of Record*
for Petitioner

RANDOLPH P. MURRELL
Federal Public Defender
GWENDOLYN SPIVEY*
227 N. Bronough Street
Suite 4200
Tallahassee, Florida 32301
(850) 942-8818/09

**Counsel of Record*
for Respondent Drayton

STEVEN L. SFLIGER*
Garcia & Seliger
Post Office Box 324
Quincy, Florida 32353-0324
(850) 875-4668

**Counsel of Record*
for Respondent Brown

PETITION FOR WRIT OF CERTIORARI FILED: OCT. 12, 2001
CERTIORARI GRANTED: JAN. 4, 2002

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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
(TALLAHASSEE)

No. 99-CR-15-ALL

UNITED STATES OF AMERICA, PLAINTIFF

v.

CHRISTOPHER DRAYTON AND
CLIFTON BROWN, JR., DEFENDANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
2/8/99	1	COMPLAINT as to CLIFTON BROWN JR [4:99-m-12] (tld) [Entry date 02/08/99]
2/8/99	1	COMPLAINT as to CHRISTOPHER DRAYTON [4:99-m-13] (tld) [Entry date 02/08/99]
2/8/99	2	INITIAL APPEARANCE Minutes held; Detention Hearing set for 10:00 2/12/99 for CLIFTON BROWN JR [Court Reporter: Tape 99-4] (Defendant informed of rights.) [4:99-m-12] (tld) [Entry date 02/09/99]

DATE	DOCKET NUMBER	PROCEEDINGS
2/8/99	2	INITIAL APPEARANCE Minutes held; Detention Hearing set for 10:00 2/12/99 for CHRISTOPHER DRAYTON [Court Reporter: Tape 99-4] (Defendant informed of rights.) [4:99-m-13] (tld) [Entry date 02/09/99]
2/8/99	3	CJA 23 FINANCIAL AFFIDAVIT by CLIFTON BROWN JR [4:99-m-12] (tld) [Entry date 02/09/99]
2/8/99	3	CJA 23 FINANCIAL AFFIDAVIT by CHRISTOPHER DRAYTON [4:99-m-13] (tld) [Entry date 02/09/99]
2/8/99	4	ORDER Appointing Federal Public Defender for CLIFTON BROWN JR (Signed by Magistrate Judge William C. Sherrill Jr.) Copies sent as noted on document. [4:99-m-12] (tld) [Entry date 02/09/99]
2/8/99	4	ORDER Appointing Federal Public Defender for CHRISTOPHER DRAYTON (Signed by Magistrate Judge William C. Sherrill Jr.) Copies sent as

DATE	DOCKET NUMBER	PROCEEDINGS
		noted on document. [4:99-m-13] (tld) [Entry date 02/09/99]
		* * * * *
2/9/99	6	CJA 20 as to CLIFTON BROWN JR: Appointment of Attorney GEORGE WASHINGTON BLOW III Voucher # 0782047 Copies sent as noted on document. (Original to CJA attorney) [4:99-m –12] (tld) [Entry date 02/09/99]
2/11/99	7	MOTION by CLIFTON BROWN JR to Suppress, to Dismiss [4:99-m-12] (tld) [Entry date 02/11/99]
2/11/99	—	Motion(s) referred to Magistrate Judge William C. Sherrill Jr. as to CLIFTON BROWN JR: [7-1] motion to Suppress, [7-2] motion to Dismiss [4:99-m-12] (tld) [Entry date 02/11/99]
		* * * * *
2/12/99	7	ORDER Setting Conditions of Release as to CHRISTOPHER

DATE	DOCKET NUMBER	PROCEEDINGS
		DRAYTON Bond set to $100,000 OR for CHRISTOPHER DRAYTON. (Signed by Magistrate Judge William C. Sherrill Jr.) Copies sent to AUSA, USPO, USM, defense counsel and defendant. Copies sent as noted on document. [4:99-m–13] (tld) [Entry date 02/12/99]
		* * * * *
2/12/99	9	ORDER by Magistrate Judge William C. Sherrill Jr. as to CHRISTOPHER DRAYTON . . . Release stayed pending government appeal copies sent as noted on document. [4:99-m-13] (tld) [Entry date 02/12/99]
2/12/99	10	ORDER Setting Conditions of Release as to CLIFTON BROWN JR Bond set to $100,00 OR for CLIFTON BROWN. (Signed by Magistrate Judge William C. Sherrill Jr.) Copies sent to AUSA, USPO, USM, defense counsel

DATE	DOCKET NUMBER	PROCEEDINGS
		and defendant. Copies sent as noted on document. [4:99-m-12] (tld) [Entry date02/12/99]
2/12/99	10	MOTION by CHRISTOPHER DRAYTON to Dismiss Complaint [4:99-m-13] (tld) [Entry date 02/12/99]
2/12/99	11	Appearance BOND entered as to CLIFTON BROWN JR in Amount $100,00 OR Copies sent to AUSA, USPO, USM, defense counsel and defendant. [4:99-m-12- (tld) [Entry date 02/12/99]
2/12/99	12	ORDER by Magistrate Judge William C. Sherrill Jr. as to CLIFTON BROWN JR STAYING BOND PENDING APPEAL Copies sent as noted on document. [4:99-m-12] (tld) [Entry date 02/12/99]
2/12/99	11	ORDER by Magistrate Judge William C. Sherrill Jr. as to CHRISTOPHER DRAYTON denying [10-1] motion to Dismiss Complaint as to

DATE	DOCKET NUMBER	PROCEEDINGS
		CHRISTOPHER DRAYTON (1) Copies sent as noted on document. [4:99-m-13] (tld) [Entry date 02/12/99]
2/12/99	13	ORDER by Magistrate Judge William C. Sherrill Jr. as to CLIFTON BROWN JR denying [7-1] motion to Suppress as to CLIFTON BROWN (1), denying [7-2] motion to Dismiss as to CLIFTON BROWN (1) Copies sent as noted on document. [4:99-m-12] (tld) [Entry date 02/12/99]
2/17/99	—	Indictment returned as to CHRISTOPHER DRAYTON 4:99cr15-WS [4:99-m-13] (tld) [Entry date 02/19/99]
2/17/99	—	Indictment returned as to CLIFTON BROWN JR 4:99cr15-WS [4:99-m-12] (tld) [Entry date 02/19/99]
2/17/99	12	INDICTMENT as to CHRISTOPHER DRAYTON (1) count(s) 1, 2, CLIFTON BROWN (2) count(s) 1, 2 (Copies sent to AUSA, USPO, and USM) (sfl) [Entry date 02/22/99]

DATE	DOCKET NUMBER	PROCEEDINGS
2/19/99	13	EMERGENCY NOTICE OF APPEAL of Conditions of Release by USA as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR and Motion for Stay. (sfl) [Entry date 0/22/99]
		* * * * *
2/24/99	18	Minute entry as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR:, Court upholds Magistrate's Order of Conditions of Release and orders the defendants released. setting Evidentiary Hearing deadline for 10:00 3/4/99 for CHRISTOPHER DRAYTON for CLIFTON BROWN JR re: suppression motions Ct. repr. Lisa Jones (tld) [Entry date 02/24/99]
2/24/99	19	ARRAIGNMENT as to CHRISTOPHER DRAYTON held [Court Reporter: Lisa Jones] Plea not guilty as charged. (tld) [Entry date 02/24/99]

DATE	DOCKET NUMBER	PROCEEDINGS
2/24/99	20	ARRAIGNMENT as to CLIFTON BROWN JR held [Court Reporter: Lisa Jones] Plea not guilty as charged. (tld) [Entry date 02/24/99]
2/24/99	21	ORDER SETTING TRIAL as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR setting Jury Trial for 9:00 4/13/99 for CHRISTOPHER DRAYTON, for CLIFTON BROWN JR; (Signed by Judge William Stafford) Copies sent as noted on document. (tld) [Entry date 02/24/99]
2/24/99	22	MOTION by CHRISTOPHER DRAYTON to Suppress Evidence Illegally Seized (sfl) [Entry date 02/24/99]
		* * * * *
2/25/99	23	NOTICE of Hearing as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR.

DATE	DOCKET NUMBER	PROCEEDINGS
		Suppression hearing set for Thursday, March 4, 1999 at 10:00 AM. Copies sent as noted on document. (tdg) [Entry date 02/25/99]
2/25/99	24	MOTION by CHRISTOPHER DRAYTON to Continue evidentiary hearing (tdg) [Entry date 02/25/99]
2/25/99	25	ORDER by Judge William Stafford as to CHRISTOPHER DRAYTON granting [24-1] motion to Continue evidentiary hearing as to CHRISTOPHER DRAYTON (1) Copies sent as noted on document. (tdg) [Entry date 02/25/99]
2/25/99	26	NOTICE of Hearing as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR, resetting Evidentiary Hearing deadline for 10:00 3/16/99 for CHRISTOPHER DRAYTON, for CLIFTON BROWN JR re: [22-1] motion to Suppress Evidence Illegally

DATE	DOCKET NUMBER	PROCEEDINGS
		Seized by CHRISTOPHER DRAYTON Copies sent as noted on document. (tdg) [Entry date 02/25/99]
3/10/99	27	RESPONSE by USA as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR re [22-1] motion to Suppress Evidence Illegally Seized (sfl) [Entry date 03/10/99]
		* * * * *
3/15/99	28	NOTICE of Hearing as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR, re-setting Evidentiary Hearing deadline for 9:00 3/16/99 for CHRISTOPHER DRAYTON, for CLIFTON BROWN JR re: Copies sent as noted on document. (tdg) [Entry date 03/15/99]
3/16/99	29	ORDER by Judge William Stafford as to CHRISTOPHER DRAYTON denying [22-1] motion to Suppress Evidence Illegally Seized as

DATE	DOCKET NUMBER	PROCEEDINGS
		to CHRISTOPHER DRAYTON (1) Copies sent as noted on document. (sfl) [Entry date 03/16/99]
3/16/99	30	MOTION by CLIFTON BROWN JR to suppress evidence (tdg) [Entry date 03/16/99]
3/16/99	31	Minute entry as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR: hearing on motion to suppress evidence. Oral order denying [30-1] motion to suppress evidence as to CLIFTON BROWN (2) (tdg) [Entry date 03/16/99]
		* * * * *
4/5/99	34	Minute entry as to CLIFTON BROWN JR: Scheduled plea is cancelled. Motion for CJA counsel, George Blow, to withdraw is GRANTED. Clerk to find new counsel from CJA panel list. Trial is reset for Tuesday, April 13th to Tuesday, April 20th at 1:00 pm. TERMINATED deadline re: (tlg) [Entry date 04/05/99]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
4/5/99	36	CJA 20 as to CLIFTON BROWN JR: Appointment of Attorney WILLIAM EDWARD BUBSEY Voucher # 0781586 by Judge William Stafford Copies sent as noted on document. (Original to CJA attorney) (tdg) [Entry date 04/06/99]
4/7/99	37	MOTION TO SUPPRESS HEARING TRANSCRIPT filed in case as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR for dates of 03/16/99 (Lisa Jones Court Reporter) (sfl) [Entry date 04/08/99]
4/8/99	38	NOTICE of Appearance for CLIFTON BROWN JR by Attorney Clifton Brown, Jr. (abb) [Entry date 04/09/99]
		* * * * *
4/19/99	40	REARRAIGNMENT Minutes as to CLIFTON BROWN JR held (Court Reporter: Lisa Jones) (tdg) [Entry date 04/19/99]

DATE	DOCKET NUMBER	PROCEEDINGS
4/19/99	41	STATEMENT OF FACTS as to defendant CLIFTON BROWN JR (tdg) [Entry date 04/19/99]
4/19/99	42	Plea Agreement as to CLIFTON BROWN JR (Copies to: AUSA, USPO, Bubsey) (tdg) [Entry date 04/19/99]
4/19/99	—	PLEA of Guilty: CLIFTON BROWN (2) count(s) 1; Court accepts plea. Gvt moves to dismiss count 2. GRANTED. Sentencing set for 11:00 7/20/99 for CLIFTON BROWN JR. Court Reporter: Lisa Jones (tdg) [Entry date 04/19/99]
4/19/99	43	NOTICE of Hearing as to CLIFTON BROWN JR. Setting sentencing for 7/20/99 at 11:00 AM. Copies sent as noted on document. (tdg) [Entry date 04/19/99]
4/20/99	44	Proposed Jury Instructions by USA as to CHRISTOPHER DRAYTON (tdg) [Entry date 04/20/99]

DATE	DOCKET NUMBER	PROCEEDINGS
	* * * * *	
4/20/99	48	JURY TRIAL MINUTES. Voir dire begun as to CHRISTOPHER DRAYTON (1) count(s) 1, 2. Jury trial on 4/20/99 Verdict returned the same day. See minutes for proceeding notes. (tdg) [Entry date 04/21/99]
4/20/99	49	Clerk's Exhibit list as to CHRISTOPHER DRAYTON (tdg) [Entry date 04/21/99]
4/20/99	50	Court's Jury instructions as to CHRISTOPHER DRAYTON (tdg) [Entry date 04/21/99]
4/20/99	51	JURY VERDICT of Guilty: CHRISTOPHER DRAYTON (1) count(s) 1, 2 (tdg) [Entry date 04/21/99]
4/21/99	52	NOTICE of Hearing as to CHRISTOPHER DRAYTON, setting sentencing date for 11:00 7/20/99 for CHRISTOPHER DRAYTON Copies sent as noted on document. (tds) [Entry date 04/21/99]

DATE	DOCKET NUMBER	PROCEEDINGS
6/8/99	53	USPO LETTER Re: PSR for defendant CLIFTON BROWN JR (sfl) [Entry date 06/08/99]
6/15/99	54	LETTER USPO PSR Re: PSR Report for defendant CHRISTOPHER DRAYTON. (ddj) [Entry date 06/15/99]
6/24/99	55	MOTION by CLIFTON BROWN JR to withdraw guilty plea (sfl) [Entry date 06/25/99]
6/24/99	56	MOTION by William E. Bubsey as to CLIFTON BROWN JR to withdraw as counsel of record (sfl) [Entry date 06/25/99]
	* * * * *	
6/29/99	60	NOTICE of Hearing as to CLIFTON BROWN JR, Motion Hearing set for 2:30 7/1/99 for CLIFTON BROWN JR for [56-1] motion to withdraw as counsel of record, set for 2:30 7/1/99 for CLIFTON BROWN JR for

DATE	DOCKET NUMBER	PROCEEDINGS
		[55-1] motion to withdraw guilty plea Copies sent as noted on document. (tdg) [Entry date 06/29/99]
7/1/99	61	Minute entry as to CLIFTON BROWN JR: granting [56-1] motion to withdraw as counsel of record as to CLIFTON BROWN (2). Clerk to find replacement CJA counsel and to set an evidentiary hearing on motion to withdraw plea. (tdg) [Entry date 07/01/99]
7/6/99	63	CJA 20 as to CLIFTON BROWN JR: Appointment of Attorney Steven Seliger, Voucher # 0781902 by Judge William Stafford. Copies sent as noted on document. (Original to CJA attorney) (tdg) [Entry date 07/13/99]
7/8/99	62	NOTICE of APPEARANCE OF STEVEN SELIGER as to CLIFTON BROWN JR (sfl) [Entry date 07/09/99]

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DATE	DOCKET NUMBER	PROCEEDINGS
9/2/99	69	Minute entry: of evidentiary hearing as to CLIFTON BROWN JR. Court Reporter: Lisa Jones. Oral order denying [55-1] motion to withdraw guilty plea as to CLIFTON BROWN (2). Clerk is to set the case for sentencing - allowing for time to revise PSR. (tdg) [Entry date 09/02/99]
9/2/99	70	SENTENCING Minutes as to CHRISTOPHER DRAYTON held. (Court Reporter: Lisa Jones) CHRISTOPHER DRAYTON (1) count(s) 1, 2. Sentence imposed: 120 months BOP as to each of counts 1 and 2 - to run concurrently. SMA of $200. Eight years of S/R with special conditions. (tdg) [Entry date 09/02/99]
9/3/99	71	OBJECTION by USA to Presentence Investigation Report as to CLIFTON BROWN JR (sfl) [Entry date 09/08/99]

DATE	DOCKET NUMBER	PROCEEDINGS
9/3/99	72	NOTICE OF APPEAL by Appeal record due on 10/4/99 for CHRISTOPHER DRAYTON (sfl) [Entry date 09/08/99]
	* * * * *	
9/14/99	75	JUDGMENT by Judge William Stafford CHRISTOPHER DRAYTON (1) count(s) 1, 2. Imprisoned for a term of 120 months on count 1 and 120 months on count II, to run concurrently with each other, with $200.00 assessment, 8 years supervised release Copies sent as noted on document. (sfl) [Entry date 09/16/99]
	* * * * *	
9/22/99	78	TRANSCRIPT re: jury trial Date(s): April 20, 1999 Court Reporter/Tape Number: Lisa Jones Volume: 1 Number of Pages: 87 Re: Jury Trial as to CHRISTOPHER DRAYTON (tld) [Entry date 09/24/99]

DATE	DOCKET NUMBER	PROCEEDINGS
	* * * * *	
11/3/99	85	CERTIFIED Record on Appeal Transmitted to USCA Re: [72-1] appeal as to CHRISTOPHER DRAYTON USCA #: 99-13814I (sfl) [Entry date 11/03/99]
11/9/99	86	SENTENCING Minutes as to CLIFTON BROWN JR held. Adjudicated guilty of count 1. Sentenced to BOP for a term of 88 months, SMA of $100, S/R of 5 years with special conditions. Count 2 dismissed. Mr. Seliger will continue representation on appeal. (Court Reporter: Lisa Jones) CLIFTON BROWN (2) count(s) 1 (tdg) [Entry date 11/09/99]
11/9/99	—	DISMISSAL of Count(s) on Government Motion as to CLIFTON BROWN JR Counts Dismissed: CLIFTON BROWN (2) count(s) 2 (als) [Entry date 01/21/00]

DATE	DOCKET NUMBER	PROCEEDINGS
11/10/99	87	ACKNOWLEDGMENT [83-1] certificate as to CHRISTOPHER DRAYTON appeal number 99-13814I (sfl) [Entry date 11/10/99]
		* * * * *
11/10/99	88	NOTICE OF APPEAL by CLIFTON BROWN (2) count(s) 1 Copies sent as noted on document. (als) [Entry date 01/21/00]
		* * * * *
11/17/99	91	JUDGMENT by Judge William Stafford CLIFTON BROWN (2) count(s) 1. Defendant plead guilty on Count 1 and was committed to the custody of United States Bureau of Prisons for a term of 88 months and to pay $100.00 SMA, Count 2 was dismissed by the Government Copies sent as noted on document. (sfl) [Entry date 11/18/99] [Edit date 11/18/99]

DATE	DOCKET NUMBER	PROCEEDINGS
11/19/99	92	Judgment Returned Executed as to CHRISTOPHER DRAYTON on 11/21/99 at location: Coleman Correctional Inst. (sfl) [Entry date 11/22/99]
		* * * * *
12/13/99	93	TRANSMITTAL of Notice of Appeal and certified copy of docket as to CLIFTON BROWN JR to USCA: [88-1] appeal (sfl) [Entry date 12/13/99]
		* * * * *
12/27/99	94	USCA #: as to CLIFTON BROWN JR Re: [88-1] appeal USCA Number: 99-15152 (amm) [Entry date 12/28/99]
12/27/99	95	USCA LETTER to CJA attorney re: CJA voucher (appeal #99-15152 (amm) [Entry date 12/28/99]
12/27/99	96	USCA LETTER re: filing fee (appeal #99-15152) (amm) [Entry date 12/28/99]

DATE	DOCKET NUMBER	PROCEEDINGS
1/5/00	97	NOTICE of appeal information sheet filed by CLIFTON BROWN JR (sfl) [Entry date 01/05/00]
1/10/00	98	ACKNOWLEDGMENT estimated time for filing transcript provided by Lisa Jones, Transcripts should be filed by 2/7/00 as to CLIFTON BROWN JR (sfl) [Entry date 01/10/00]
1/11/00	99	CERTIFICATE OF READINESS as to CLIFTON BROWN JR USCA # 99-15152 Re: Copies sent as noted on document. (sfl) [Entry date 01/11/00]
1/11/00	100	CERTIFIED Record on Appeal Transmitted to USCA Re: [88-1] appeal as to CLIFTON BROWN JR USCA #: 99-15152 (sfl) [Entry date 01/11/00]
1/11/00	101	Judgment Returned Executed as to CLIFTON BROWN JR on 12/14/99 at location: FCI, Miami. (sfl) [Entry date 01/11/00]

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
2/22/00	108	CERTIFIED Record on Appeal Transmitted to USCA Re: as to CLIFTON BROWN JR USCA #: 99-15152 COMPLETE RECORD FOR BROWN MAILED TO USCA (sfl) [Entry date 02/22/00]
2/29/00	109	ACKNOWLEDGMENT [108-1] appeal record as to CLIFTON BROWN JR (sfl) [Entry date 02/29/00]

* * * * *

11/9/00	115	ORDER by Judge William Stafford as to CLIFTON BROWN JR Defendant shall be released to the supervision of the United States Probation Office for the Southern District of Florida pending further action in his case. Copies sent as noted on document. (sfl) [Entry date 11/09/00]
11/9/00	116	ORDER by Judge William Stafford as to CHRISTOPHER DRAYTON deft. shall be released to the

DATE	DOCKET NUMBER	PROCEEDINGS
		supervision of the United States Probation Office. Copies sent as noted on document. (sfl) [Entry date 11/09/00]
		* * * * *
12/14/00	118	ORDER by Judge William Stafford as to CLIFTON BROWN JR granting [117-1] motion to amend conditions of releaes for Christmas Holidays as to CLIFTON BROWN (2) Copies sent as noted on document. (sfl) [Entry date 12/14/00]
		* * * * *
3/9/01	119	MOTION by CLIFTON BROWN JR to Modify Conditions of Release (sfl) [Entry date 03/09/01]
3/9/01	120	ORDER by Judge William Stafford as to CLIFTON BROWN JR granting [119-1] motion to Modify Conditions of Release Copies sent as noted on document. (sfl) [Entry date 03/09/01]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
4/20/01	122	ORDER by Judge William Stafford as to CLIFTON BROWN JR granting [121-1] motion to Modify Conditions of Release as to CLIFTON BROWN (2) Copies sent as noted on document. (als) [Entry date 04/20/01]
5/31/01	123	MANDATE OF USCA as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR Re:, reversing and remanding CHRISTOPHER DRAYTON (1) count(s) 1, 2, CLIFTON BROWN (2) count(s) 1, 2 USCA #:99-13814 & 99-15152 (sfl) [Entry date 06/01/01]
6/1/01	124	RECORD on Appeal Returned from USCA Re: USCA #: 99-15152 CONSISTING OF: Number of Volumes of Pleadings: 1 Number of Volumes of Transcripts: 3 Number of Volumes of Exhibits: 2 envelopes in 99-13814 Other: Reason: appeal closed (sfl) [Entry date 06/01/01]

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
6/1/01	125	JUDGMENT by USCA Reversed and Remanded conviction (sfl) [Entry date 06/01/01]
		* * * * *
6/4/01	—	Deadline updated as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR Setting deadline for checking status (w/AUSA) of remand from USCA by: 7/20/01 (als) [Entry date 06/04/01]
6/13/01	126	RECORD on Appeal Returned from USCA Re: [85-1] recommendations appeal, [81-1] number appeal, [72-1] appeal as to CHRISTOPHER DRAYTON USCA #: 99-13814-II CONSISTING OF: Number of Volumes of Pleadings: 1 Number of Volumes of Transcripts: 4 Reason: mandate previously issued (als) [Entry date 06/13/01]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
8/23/01	132	ORDER by Judge William Stafford as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR granting [128-1] motion to enforce Mandate of 11th Circuit as to CLIFTON BROWN (2), setting deadline to file status report for 9/20/01 for CHRISTOPHER DRAYTON, for CLIFTON BROWN JR Reason: Supreme Court standing re: certiorari Conditions of release modified as outlined. Steven Seliger reappointed to represent Defendant Brown nunc pro tunc to 10/24/00. Copies sent as noted on document. (als) [Entry date 08/24/01]
9/10/01	133	STATUS Report by USA as to CHRISTOPHER DRAYTON, CLIFTON BROWN JR and agreed motion to continue stay (als) [Entry date 09/11/01]
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
10/25/01	136	ORDER by Judge William Stafford as to defendant CHRISTOPHER DRAYTON, defendant CLIFTON BROWN JR granting [135-1] motion to continue Stay Staying until 1/31/02 Copies sent as noted on document. (kdc) [Entry date 10/26/01]

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT (ATLANTA)

No. 99-13814-II

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

CHRISTOPHER DRAYTON, DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	DATE 2	DOCKET ENTRY
		* * * * *
10/07/99		Briefing Notice Issued
		* * * * *
11/04/99		Record on Appeal
11/17/99		Record Excerpts
11/17/99		Appearance Form Submitted: Gwendolyn L. Spivey.
		* * * * *
11/17/99	11/5/99	Appellant Brief: Appellant-Drayton, Christopher (Atty: Gwendolyn L. Spivey)
12/20/99		Appearance Form Submitted: Terry Flynn

DATE	DATE 2	DOCKET ENTRY
12/20/99	12/15/99	Appellee Brief–Atty Terry Flynn
12/27/99		Supp. Brief, construed as Supp. Authority for Appellee
01/05/00	1/03/00	Reply Brief–Atty Randolph P. Murrell
01/11/00		Appearance Form Submitted: Michael T. Simpson
02/22/00		Supplemental Authority for Appellant
04/21/00		Supplemental Authority for Appellant
07/17/00		Sua Sponte; this appeal is consolidated with 99-15152
07/31/00		Supplemental Authority for Appellant: Appellant–Drayton Christopher (Atty: Gwendolyn L. Spivey)
09/06/00		Supplemental Authority for Appellant: Appellant–Drayton Christopher (Atty: Gwendolyn L. Spivey)
09/13/00		Supplemental Authority for Appellee: Appellee-United States of America (Atty: Michael Simpson)

DATE	DATE 2	DOCKET ENTRY
09/13/00		Gwendlyn L. Spivey argued for Appellant; Michael T. Simpson argued for Appellee
		* * * * *
10/24/00		Opinion Issued REVERSED & REMANDED. Also in filed 99-15152
10/24/00		Judgment Entered
		* * * * *
11/02/00		Motion for Extension to File Request for Rehearing
11/03/00		Telephoned atty Spivey–she is opp to mtn 4 ext to file PFR
11/14/00		Appellee's motion for an extension of time to file their petition for Rehearing En Banc up to and including December 14, 2000 is GRANTED.(EEC)j
		* * * * *
12/11/00		Motion for Extension to File Request for Rehearing (unop)
		* * * * *

DATE	DATE 2	DOCKET ENTRY
12/13/00		Appellee's second motion for an extension of time to file their Petition for Rehearing En Banc up to and including December 28, 2000 is GRANTED. (EEC)(J)
		* * * * *
12/28/00	01/02/01	Petition for Rehearing En Banc: Appellee–United States of America, (Atty: Michael Rotker): Appellee
		* * * * *
05/16/01		The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, the Petition(s) for Rehearing En Banc are DENIED.
		* * * * *

DATE	DATE 2	DOCKET ENTRY
05/29/01		Mandate Issued
		* * * * *
06/08/01	06/08/01	MDT1 (Mandate-Issuance) Issued. To: Mossing, Robert A.
08/03/01	9/13/01	Ext. for Filing Certiorari Granted: Appellee-United States of America (Atty: Jeffrey Atkins) 01A97
09/04/01	10/12/01	Ext. for Filing Certiorari Granted: Appellee-10/12/01 United States of America (Atty: Terry Flynn)
10/18/01	10/12/01	Notice of Filing Certiorari: Appellee-United States of United States of America (Atty: Terry America, Flynn) SC# 01-631
01/31/02	01/04/02	Certiorari Granted: Appellee-United States of America, (Atty: United States of America, Terry Flynn) sc# 01-631

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT (ATLANTA)

No. 99-15152

UNITED STATES OF AMERICA, PLAINTIFF

v.

CLIFTON BROWN, JR., DEFENDANT

DOCKET ENTRIES

DATE	DATE 2	DOCKET ENTRY
	* * * * *	
2/10/00		Briefing Notice Issued BR-1
	* * * * *	
02/23/00		Record on Appeal
03/13/00		Record Excerpts
03/13/00		Appearance Form Submitted: Steven Seliger
03/13/00	3/10/00	Appellant Brief: Appellant–Brown, Clifton Jr.: signed by Steven L. Seliger
04/12/00		Appearance Form Submitted: Terry Flynn

DATE	DATE 2	DOCKET ENTRY
04/14/00	4/12/00	Appellee Brief: Appellee–United States of America, (Atty: Terry Flynn)
07/17/00		Sua Sponte; This case is consolidated with 99-13814
	* * * * *	
09/13/00		Supplemental Authority for Appellee: Appellee-United States of America
09/13/00		Steven Seliger argued for Appellant; Michael T. Simpson argued for Appellee
	* * * * *	
10/24/00		Opinion Issued REVERSED & REMANDED. Also filed in 99-13814.
10/24/00		Judgment Entered
	* * * * *	
11/02/00		Motion for Extension to file Request for Rehearing
11/14/00		Appellee's motion for an extension of time to file their Petition for Rehearing En Banc up to and including December 14, 2000 is Granted. (EEC)j
	* * * * *	

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

4:99CR15-WS

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

CHRISTOPHER DRAYTON AND
CLIFTON BROWN, DEFENDANTS

TRANSCRIPT OF HEARING ON MOTION TO SUPPRESS

BEFORE THE HONORABLE WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE.

APPEARANCES:

For the Plaintiff: P. MICHAEL PATTERSON
U.S. Attorney
By: MICHAEL T. SIMPSON
Assistant U.S. Attorney

* * * * *

For the Defendant Drayton: RANDOLPH P. MURRELL
Federal Public Defender
BY: WILLIAM R. CLARK
Assistant Federal Public Defender

* * * * *

For the Defendant Brown: GEORGE W. BLOW, III
Attorney at Law

* * * * *

[2] TALLAHASSEE, FLORIDA - MARCH 16, 1999, 9:25 A.M.

* * * * *

[3] MR. SIMPSON: Your Honor, the question here is whether consent—the defendants' consent to the search of their luggage, in particular of their persons, was obtained by physical force or show of authority, or whether a reasonable person in their position would have felt free to say no to the officers' request.

You're going to learn from Investigator Rufus Lang today, the old saw that you catch more flies with honey than vinegar is true, and you catch a lot more flies with honey.

I want to speak about some of the factors that are going to be illustrated by his testimony.

[4] We are, as the United States Supreme Court said in Bostick, first of all, not looking at the mind of the beliefs of a reasonable drug courier, but a reasonable, innocent person. And the vast majority of persons riding the buses and the vast majority of persons Investigator Lang contacts are good citizens. They're not carrying drugs, they don't have anything to fear from police contact.

And one thing you will see is that the vast majority of good citizens in this country are willing to cooperate with police if you ask them nicely. And it's not because they are ordered to or commanded to or have some cattle call show of force like in the Guapi and Washington cases, but because good citizens in this society

value a safe and orderly society. And you will learn, as Investigator Lang testifies, that he understands this and he, frankly, uses it to his advantage. And the same factors that make his contacts with citizens nonconfrontational are the same factors which make citizens want to go along with him.

He does not treat passengers as suspects, even if he does suspect that they may be involved in criminal activity. He treats them as citizens. He does not ask for their ticket or their identification or even who they are. As you would a suspect, he makes a casual, polite request for assistance, and frankly he gets it a remarkably high percentage of the time. His contacts are friendly. They are brief. They are not [5] accusatory. He does not suggest that they either have committed a crime, or if they hadn't committed a crime they would let him look. He does not detain them. If they want to get off the bus, either while he's talking to or before, he lets them. If they're not interested in the search, that's their decision.

It is not an interview or an interrogation, but basically he holds himself to making one or two simple requests. And frankly, the fewer things you ask people to do, the more likely they are to do them. As quickly as possible he gets to the point of can he search their luggage or can he search their person or both.

One reason for Investigator Lang's success is, frankly, his talent, his people sense. He is friendly. He is attractive. He is soft spoken. He may be in some respects—comes across like a big old teddy bear. He reads people and their responses, and he listens to what they're saying, and frankly, I assume he must like people to be able to be so successful at this. But he is really the archetypical Officer Friendly.

One reason for his success is his audience. People on buses are obviously not there because it's glamorous or because it's fun to be on a bus. They're there because they're generally economically disadvantaged, whether they are students, or unemployed, or just plain don't have much money. [6] They need to go somewhere, and that's the only way they've got to get there.

They endure long trips. I think you're going to hear that a trip from Miami to here is ten or 12 hours, and if you're going—these defendants said they were going up to Indiana, so probably that much more to look forward to. They endure long trips in the company of total strangers. They worry about thefts, which are a problem on buses. They worry about being basically trapped in a seat for hours at a time next to somebody who may be intoxicated, whether on drugs, or alcohol, or just plain crazy, or have a weapon, or being unpleasant. And when a nice man from the police department comes along and says he's there trying to deter drugs and alcohol and weapons from the bus, and asks them politely to help them, he's protecting them. And they want to keep those things off the bus, and as long as he is minimally intrusive, they're on his side. And that's another reason for his success.

I mention the time it takes to travel on the bus. Frankly, one of the things about riding a bus is it's boring. You're there for ten or 12 hours to get here and however much—

THE COURT: Is this closing argument or is this a preview of —

MR. SIMPSON: This is a preview of what you're going to see, Your Honor. I mean there are no stewardesses handing [7] out peanuts and asking if you want

a cocktail or Coca-Cola on the bus. There are no magazines, unless you bring them yourself. There's no in-flight movies. And in this context, when people basically—if you're riding on an airplane, and you're just going an hour or two on an airplane, we all know people strike up casual conversations with total strangers.

I suggest that you can remember, and I suspect that sometime in the distant past, Your Honor, as least as a young man, must have spent a little time on the bus. With the time that's involved in that, considering the conversations that happen on a brief airline flight, I suspect people talk about everything from their grandchildren to their kidney stones to what have you. Again, it's boring. And in this context, when a police officer comes along in a nonthreatening manner, and wants to talk to them, it's a high point in a dull day, and they're interested in talking to him.

And he comes along, and not only is he physically and intellectually attractive, he is letting them into his exciting world of drug interdiction and police work, and he comes across to them as being genuinely interested in them. And in this context, even though it's only for a minute or two, and even though nothing comes of it, they like the attention, they like the break in the monotony, and it's the kind of thing when they get to the end of the trip and they meet their family members, it's something they talk about. And that's another reason they [8] go along.

The now the Guapi case noted that it is not unusual to be approached by a fellow traveler on a bus or an airplane, and therefore—

THE COURT: I have read those cases and I've read your memorandum. Mr. Simpson—

MR. SIMPSON: And that is exactly what you're going to find that Investigator Lang does; he makes those casual low key approaches.

THE COURT: Well, okay, I think I understand that, and I'm going to give everybody an opportunity to make their arguments after I've heard the evidence in the case. And I thought I was going to hear opening statement here. I think what I'm hearing is a little "Simpson On Travel," surface transportation.

MR. SIMPSON: Well, I will confess I have a few miles there, Your Honor.

THE COURT: And I have to tell you for seven years I rode the bus across the whole Commonwealth of Pennsylvania many, many, many times. I have not been on one in several years, and I trust that this—that buses haven't changed too much. I take it there are two seats on either side with an aisle down the middle, and probably a bench type seat across the back butting into the only restroom on the bus, with a driver up front, isolated, and across from him the steps down [9] to the only exit door off the bus. If that's how these things are configured, then I'm familiar with them. An overhead rack and space underneath where they have your luggage accessed only from outside. If we're in agreement that's how these buses are configured, then I think I know. And I've been down to this bus station, if they're still using either Greyhound, or the old Trailways terminal just a couple blocks from here.

I don't think—I haven't noticed any change in the structure of those places. I have been there to pick up

packages and passengers, nephews on spring break and that type thing. So I think I'm familiar with the bus station, unless it's undergone a radical change. Go ahead.

MR. SIMPSON: With that then, let me call Investigator Rufus Lang.

THE COURT: All right, fine.

DEPUTY CLERK: Please raise your right hand, sir.

RUFUS R. LANG, GOVERNMENT WITNESS, DULY SWORN.

DEPUTY CLERK: Please take a seat. Would you state your full name and spell your last name?

THE WITNESS: Rufus R. Lang. Last name spelled L-A-N-G.

DIRECT EXAMINATION

BY MR. SIMPSON:

Q. Mr. Lang, you are an investigator for the Tallahassee Police Department?

[10] A. Yes, I am.

Q. How long have you been with TPD?

A. Approximately 13 years.

Q. And during some portion of that 13 years, have you been involved with drug interdiction stops both at the bus station and also at the airport here in Tallahassee?

A. Yes, I have.

Q. Can you tell us approximately what period of time?

A. Approximately three years.

Q. Did I give you yesterday a copy of the government's opposition motions to suppress in this case?

A. Yes.

Q. Did you have a chance to read over it?

A. Yes.

Q. As far as the factual representations in that opposition, both as far as what happened concerning Defendants Drayton and Brown, and also your regular method of operation in these cases, is the government's opposition accurate?

A. Yes, sir.

Q. I want to get to some specifics of this. When you work a bus—first of all, do you work by yourself or with other officers?

A. Other officers.

Q. Normally how many?

A. Two.

[11] Q. So three total?

A. Yes.

Q. And how do you dress yourselves for this?

A. Plain clothes, normal dress. Either a large shirt or a big jacket to cover my weapon.

Q. You are armed?

A. Yes, I am.

Q. Is your weapon visible?

A. No, sir, it's not.

Q. Does your weapon make a bulge under your clothes so if somebody knew what they were doing would know it was there?

A. No.

THE COURT: Like I say, I read what you filed, and I think I know the MO on this thing, but I think what we need to focus in on is what happened on that day.

I take it you were not dressed in a coat and tie with a suit on as you are right now, right?

THE WITNESS: No, sir.

BY MR. SIMPSON:

Q. Casual clothes of some kind?

A. Yes. Usually jeans, jean jacket, or either jeans and a big shirt, depending on the weather.

Q. Did you have a badge displayed in some fashion?

A. Yes, sir, I did.

THE COURT: We're focused in on this stop of—on [12] this confrontation with Drayton and Brown in this case.

BY MR. SIMPSON:

Q. On the February 4 stop, of 1999, that involved Drayton and Brown.

A. I had my badge in my hand.

Q. And as you entered the bus that turned out to have Drayton and Brown on it, first of all, did one officer—were the other officers dressed similarly to you?

A. Yes, we were dressed in plain casual clothes.

Q. No police equipment showing, no handcuffs or night sticks or anything?

A. No, sir.

Q. Did one officer remain in the front of the bus?

A. Yes.

Q. Who was that?

A. Investigator Hoover.

Q. And where specifically at the front of the bus did Investigator Hoover remain?

A. Well, he was kneeling in the driver's seat looking over the back panel of the driver's seat.

Q. Is there anything that would prevent or make it difficult for the passengers to see Investigator Hoover in that position?

A. To see him—if you're not actually looking, yes, because there's a panel where the driver will have something behind him from the rest of the passengers and has a little shade over it [13] and it comes up to about right here, and he's kneeling in the seat just looking back at the passengers.

THE COURT: Is that like—some of them, I know, are kind of a plexiglass.

THE WITNESS: Yes, sir, plexiglass.

THE COURT: And I guess for night driving there's a curtain or drape or something that comes over.

THE WITNESS: It's like a shade, a vinyl shade that they pull down.

BY MR. SIMPSON:

Q. Like a roller blind?

A. Yes, sir.

THE COURT: But in this case, Officer Hoover was in effect on his haunches, leaning on the back of the driver's seat with his back to the windshield and his eyes to the back of the bus?

THE WITNESS: Yes, sir.

THE COURT: Okay.

BY MR. SIMPSON:

Q. And again, would he have been generally visible to passengers on the bus?

MR. BLOW: Objection, calls for speculation.

BY MR. SIMPSON:

Q. Were you standing on that bus?

A. Yes, I was.

[14] Q. Did you have occasion to look around the bus?

A. Yes.

Q. Was he generally visible from where you were when you were in the passenger area?

A. Yes, I could see him.

Q. Was he holding his badge up?

A. No, sir.

Q. Now, the other officer you said was Investigator Blackburn?

A. Yes

Q. And what did Investigator Blackburn do when he got on the bus?

A. Investigator Blackburn boarded the bus before I boarded the bus. He proceeded to the very back of the bus, which is where the bench seat of the bus next to the bathroom.

He went straight to the back of the bus and made contact with the passenger that was sitting at the very back of the bus.

Q. And in general, what are the purposes—are you actually the officer that makes the primary—who is making the primary contacts that day?

A. Yes, sir.

Q. What is the primary purpose of having the other two officers on the bus?

A. Investigator Hoover is observing passengers' reactions to [15] what I am doing for my safety. Investigator Blackburn is also doing the same. He's observing the passengers while I make contacts with whoever I am contacting on the bus.

Q. Does Investigator Blackburn in this position ever make contact with passengers himself?

A. Yes. Usually he make contact with the person that's in the very, very back on the bench because he's in front of me when we go to the back of the bus. So he usually made contact with the very first person, which is on the bathroom in the back on the bench seat. He would usually make contact with that person.

Q. Do you know if he did so on this day?

A. Yes, sir, he did.

THE COURT: Let me ask you, as you work forward —as I understand, you work from the back of the bus forward?

THE WITNESS: Yes, sir.

THE COURT: Does he stay in tandem with you as you work forward, or does he remain back there near the restroom?

THE WITNESS: He stays back near the restroom.

BY MR. SIMPSON:

Q. And getting back to the specific bus that these defendants were on, as you three officers boarded the bus, did any of you or anyone else make any kind of general announcement to the bus?

A. No, sir, we did not make a general announcement.

[16] Q. Did you any of you hold up your badge so that everyone on the bus could see it?

A. No, sir.

Q. Did any of you issue any general requests or instructions to the bus passengers as a whole?

A. No, sir.

Q. Were Mr. Drayton and Mr. Brown the first passengers that you had contact with that day?

A. No, sir.

Q. Why don't you start from the point where you got on the bus and walk us through everything you did and everything you said.

A. Investigator Blackburn boarded the bus before myself, and he walked straight to the back of the bus, which is where the bench seat is in the back next to the bathroom. We always made contact with the very last person in the bus because that's where we start before we start working the bus.

It was a white male sitting on the bench seat in the very very back by himself. Investigator Blackburn made contact with him, identified himself and obtained consent in reference to checking his luggage. In the meantime, I was standing there waiting until he get finished. As soon as he finished—

THE COURT: Were you in the back of the bus?

THE WITNESS: Yes, sir. I went to the very back with him. He was in front of me and I was standing just behind him, [17] as he was talking to the person in the back of the bus. We both proceeded to the very back. At that point in time when he finished, I began working my way back forward.

BY MR. SIMPSON:

Q. And when Investigator Blackburn checked that person's luggage, did he find any contraband?

A. No, sir, he didn't find any contraband.

Q. You started working your way forward?

A. Yes, I started working my way forward. I talked with the next person that was the seat up front from the one in the back, and I talked with that person briefly, and I decided I didn't want to check that particular person.

Q. And on what basis do you decide who you want to check and who you don't want to check?

A. I usually talk to people who are coming from southern cities like South Florida, Miami, Tampa, coming up this way. If you're coming from somewhere like Chattahoochee, Gainesville, Monticello—I only have a brief time to be on the bus. I can't detain the bus, and I

don't talk to everybody, but I make sure that I put a piece of luggage, which is above them, with everybody.

So that particular person I asked him did he have any luggage above his head and he said no, and I continued to move on to the next person, which was right across from him on the right.

[18] I'm not sure where that particular person came from, but I identified myself and I asked for consent and I was given consent to check his luggage.

THE COURT: Let me interject here. There is no passenger manifest, as there would be, say, on an airline, or where the person's name is on a ticket, and their destination and their point of departure is not listed on any sort of passenger manifest or—

THE WITNESS: No, sir.

THE COURT: Or I guess kind of a passenger bill of lading type thing. There's no such thing. So you have no way of—if somebody actually came from Miami and told you they got on in Lake City, there's no way you could verify that?

THE WITNESS: No, sir.

BY MR. SIMPSON:

Q. Let me ask you, Investigator Lang, when you talk to passengers, do you ask to see their ticket?

A. No, sir.

Q. Do you ask them to show you identification?

A. No, sir.

Q. Do you ask them what their name is?

A. No, sir.

Q. Now you've got a second passenger, I believe, and you said that this second passenger had agreed to let you check his luggage?

[19] A. Yes, sir, he did.

Q. Did you find any contraband in there?

A. No, sir, I didn't.

Q. Now where was that passenger in relationship to Mr. Drayton and Mr. Brown?

A. He was sitting on the passenger side of the bus, not the driver's side, but the passenger's side, about one seat back, right next to the bathroom.

Q. Is that the same side that Drayton and Brown are on, or the opposite side?

A. The opposite side from Drayton and Brown.

Q. So one seat back and across the aisle?

A. Yes, sir.

Q. Now when you speak to passengers on a bus, how do you—how loud do you speak to them?

A. I speak directly to that particular person. I'm talking generally directly to that person and not to anybody else. So my total focus is to that person.

Q. Are you speaking in tones which you would expect to carry throughout the bus?

A. Yes. I am being very polite and just carrying a general conversation with that person, so my conversation is totally to that person.

Q. I think that was the question. Is it just with that person, or are you trying to speak loud enough for other people [20] to hear what you're doing?

A. It's just for that one particular person.

Q. Are you doing anything to—let me go on. From there what happens?

A. From there, after I asked the gentleman did he have any luggage above, and he said yes, and I got to the point where I could check his baggage, I didn't find anything in his luggage. I went across to Mr. Brown and Mr. Drayton—

Q. Do you recall which is Mr. Brown and [w]hich was Mr. Drayton? Who was on the aisle and who was at the window?

A. I recall he was sitting next to the window, the gentleman with the blue sweater on, and this gentleman with the jacket on was sitting in the aisle.

THE COURT: Are these individual seats more like a bucket seat type of—

THE WITNESS: Yes, sir.

THE COURT: As contrasted to a bench type seat?

THE WITNESS: Yes, sir.

BY MR. SIMPSON:

Q. Is there some kind of arm rest between the seats?

A. I'm not sure.

Q. Or do you recall?

A. I don't recall.

MR. BLOW: Your Honor, so that the record is—reflects what's going on here, the person seated next to the [21] window that he identified is Mr. Brown.

MR. SIMPSON: Thank you, Mr. Blow.

BY MR. SIMPSON:

Q. Where are you standing when you begin talking to Mr. Drayton and Mr. Brown?

A. If—

THE COURT: Move the furniture around, whatever you want. Those chairs are movable.

THE WITNESS: If this is the aisle and this is the seat, this is the aisle right here where I'm walking. I'm standing right here. Mr. Brown is seated right here and Mr. Drayton is seated right here, and I'm standing approximately right here.

MR. SIMPSON: If I may—

THE COURT: There's one right here by the door.

MR. SIMPSON: Let's get two chairs to represent the seats they're in. And if you'll position yourself—

THE WITNESS: This is the aisle right here, and this is the back of the bus. I'm standing right here.

THE COURT: Which way are you facing?

THE WITNESS: This is the front of the bus.

THE COURT: All right.

THE WITNESS: And I'm standing right here.

THE COURT: So you've already worked one row of seats?

THE WITNESS: Yes, sir.

[22] BY MR. SIMPSON:

Q. Mr. Brown is on the window; Mr. Drayton is in the aisle?

MR. BLOW: Your Honor, if you wouldn't mind, could we have the defendants sit there to give the demonstration a little more realism?

THE COURT: If you want to. I can't—go ahead. (Defendants comply)

BY MR. SIMPSON:

Q. Mr. Lang, I understand these are probably not exactly the kind of seats they've got on the bus. Are they larger, smaller or any significant—

THE COURT: And what they're sitting in, for the record, are two generic, gun lock, individual chairs that we use in courtrooms here and throughout the country. I have some similar ones, different color, in my chambers, and I'm sure that any court reporter or any court of appeals judge listening to this knows exactly what I'm talking about, but the chairs are just standard individual chairs with wooden arm rests and leather seats and back.

BY MR. SIMPSON:

Q. Would the—in the seats on the bus—first of all, are the backs any higher, or the same height, or lower than these are?

A. I think they're a little bit higher.

Q. Did the defendants—on the bus, would the defendants [23] have any more seating room? Did the seats seem to be wider?

A. I think this is about equal to the width.

Q. And I don't remember, is the aisleway on the bus at a level of the floors or the seats? That is, would you be standing lower in the aisleway, or standing at the same level?

A. Same level.

Q. And do I recall correctly there is some kind of an overhead luggage rack?

A. Yes, sir.

Q. Does it extend over both passenger seats or just one?

A. Both passenger seats.

Q. And about how much clearance is there over the passenger's head?

A. About two feet, two to three feet.

Q. If a passenger stands up, does he have to duck his head to get out in the aisle?

A. From the inside you would have to stand up and duck your head.

Q. From the outside you can—

A. From the outside you can pretty much get out.

Q. If you would, continue with your actions and statements to Mr. Brown and Mr. Drayton?

A. After speaking with this gentleman on this side, I proceeded up to Mr. Drayton and Mr. Brown, and I lean over from here and said, "I'm Investigator Lang with the Tallahassee [24] Police Department. We're conducting bus interdiction, attempting to deter drugs and illegal weapons being transported on the bus." And I say, "Do you have any bags on the bus?" And they

both pointed up above their head to a green luggage bag, which was approximately one seat up above them.

Q. Were you able to get that statement completely out, or that question completely out, before they responded?

A. Yes. Just before I can get finished, they both pointed up here, and I asked—I said, "Do you mind if I check it?" And he said, "Go ahead."

Q. Who said, "Go ahead"?

A. Brown.

MR. BLOW: Your Honor, he's standing directly beside Mr. Drayton.

THE COURT: I want the record to reflect Officer Lang is standing with his back to the rear of the bus and facing the front of the bus and approaching then from over the right shoulder of the—whichever defendant is sitting on the aisle.

THE WITNESS: Right, sir.

THE COURT: Is that right? You're not coming up and face to face with them; you're talking to them from kind of their right side?

THE WITNESS: Yes, sir. I was somewhat like this. On his right side.

THE COURT: Bending over a little bit?

[25] THE WITNESS: Yes, sir, like this, with the badge directly talking to these two gentlemen.

THE COURT: Was it kind of "in your face," to use the current expression?

THE WITNESS: Yes, his head was turned—his attention was turned towards me, and his was also, and

I was like this with the badge. But Mr. Brown was like the owner of the luggage. He did more of the pointing, and it was like it was mine. So he was the one pointing.

BY MR. SIMPSON:

Q. Let me—I think the question the judge was asking, was there anything confrontational about your discussions?

A. No, sir. No, sir.

Q. Now, the distance—

THE COURT: I said "in your face," I meant that in quotes, kind of a colloquial expression.

BY MR. SIMPSON:

Q. The distance between your face and Mr. Drayton's face was then somewhere in the neighborhood of 12 to 18 inches?

A. Yes.

Q. And a couple of feet over from Mr. Brown?

A. Yes.

Q. How loud are you speaking at that point?

A. About just like this, just talking to them in my tone of voice right now.

[26] Q. Is there a reason you don't speak more loudly?

MR. BLOW: Again, Your Honor, I presume the record will reflect, I presume Your Honor heard what he was saying, there's no microphones, so his voice is obviously carrying for a considerable distance, however quietly he may be talking.

THE COURT: I hear him, yes. It's—it's not as strong as when he was testifying, but, go ahead.

BY MR. SIMPSON:

Q. Is there a reason you don't speak more loudly?

A. Well, I'm talking to the gentleman, or whoever I'm in contact with at that time. I'm talking to that particular person. I'm not trying to talk to everybody else. My total focus is to that particular person. I'm not talking loud. I'm being as friendly and courteous, and I'm using, "How you doing?" this type of—the tone of voice that I'm using. I'm not trying to be coercive—trying to sound like I'm a big, bad cop or anything like that. I'm just talking to them in a nice tone of on voice.

Q. And when you hold your badge up—when you held your badge up to Mr. Drayton and Mr. Brown, how long did you display the badge?

A. Long enough for him to recognize what it was. And when I was through with my time of my introduction of myself of what I was doing.

Q. Do you continue to hold up after they've had a chance to see what it is?

[27] A. Yes. Once he saw what it was and I explained who I was, I put it back in my pocket.

Q. And other than identifying yourself with the badge and saying that you were the police department, do you do anything else to identify yourself or to establish your authority?

A. Say that again.

Q. Other than saying that you're with the police department and showing your badge, do you do anything else to show who you are or to establish your authority or anything?

A. No, sir.

Q. After—I think we've gotten to the point where you identified the bag, and I'm sorry, what happens after they pointed to the green bag?

A. I asked did he mind if I search his bag.

Q. This was Mr. Brown?

A. Yes, sir. And I was asking in general the way I was speaking. I was actually talking to the both of them, but Mr. Brown did the talking saying—and they both pointed to the bag, but Mr. Brown did the talking and said it was that bag.

Q. Now you had some opportunity to speak to both of these men both on the bus and later?

A. Yes, sir, I did.

Q. Did either of them appear to be intoxicated on alcohol or [28] drugs or anything?

A. No, sir.

Q. Did either of them appear to have any difficulties understanding the English language?

A. No, sir.

Q. Did either of them at any point ask you to repeat yourself, or to explain yourself, or anything like that?

A. No, sir.

Q. Did either of them ever ask—did either of them hesitate in responding to you?

A. No. Actually they was very cooperative, very nice. It was—they were overcooperative, if you ask me.

It was like, "I don't mind doing this. Go ahead, check it. We don't have anything to hide." That's kind of the impression I got, like, "Hey, there it is. Go ahead."

Q. Okay. Did either of them at any point during the day appear to be suffering from any mental or educational impairments?

A. No, sir.

MR. BLOW: Objection, unless he's got some qualification to judge educational impairments, Judge.

BY MR. SIMPSON:

Q. Mr. Lang, you've been a police officer 13 years?

A. Yes, sir.

Q. And how frequently during your work do you deal with [29] citizens from the public?

A. Practically the entire time you're working, every day.

Q. And have you had occasion to deal with people who you learn in one fashion or other were intoxicated on drugs or alcohol?

A. Yes, sir.

Q. Have you had occasion to deal with people who have had some kind of significant mental disorders?

A. Yes.

Q. Have you had occasion to deal with people who had difficulty with the English language?

A. Yes, sir.

Q. Did either of these gentlemen display any signs of any of those problems?

A. No, sir.

Q. After Mr. Brown said you could search his luggage, what did you do?

A. I reached up and took the bag from above his head, and I took it down, and I turned around to Investigator Blackburn and handed the bag to him and asked him to check. I came back and brought my attention and noticed that Mr. Brown and Mr. Drayton were both wearing large jackets and baggy pants.

Q. Is there some significance to that in your mind?

A. Well, the weather was warm, and they were going north, but I mean they had the jackets on. So I just thought it was kind [30] of odd to have, you know, baggy pants and big jacket like that. And during my time working on the bus, I—people have been known to conceal weapons or narcotics on their person.

Q. Baggy plants pants play into that?

A. Yes, sir.

Q. How is that?

A. Because it's easy to conceal narcotics in your waist area without it being noticed, or bulges.

Q. And after you had given the bag to Mr. Blackburn, what did you do?

A. I asked Mr. Brown if he had any weapons or drugs on him. And I say, "Do you mind if I check your person?"

Q. How did Mr. Brown react when you began these questions?

A. He said, "Sure." He went into his pocket and he pulled out a cell phone. He opened up his coat like so and held up like this. I reached across Mr. Drayton.

Q. If you would, show us exactly what you did.

A. If I'm standing here, Mr. Brown said, "Sure." He kind of leaned up in the seat and turned toward me, took a phone out of his pocket and he opened up his jacket. I leaned over, I touched his jacket here and looked in that pocket, and I checked this one, and then I checked his waist area. And I asked him would he lean up for me, and he leaned up. So I checked from behind. And then I turned around and I just touched right here on the side.

[31] Q. Go ahead, show us exactly what you did.

A. He pretty much did his hands like this. I touched right here and I touched right there, and I did this, and I said, "Would you lean up for me?" He leaned up. And I touched right here on his pockets, sort of like so.

THE COURT: Talking about the groin or upper part of the legs?

THE WITNESS: Right in the upper part of the legs, right in here.

MR. SIMPSON: And if the record may reflect, Mr. Lang is illustrating with his hands running down the crease on the front of the pants from the waistband down.

THE WITNESS: Yes, sir, right here. And the pants that he was wearing were—as he was sitting, were pretty much pushed—they were baggy pants. They were pushed—the seat of his pants were down lower.

THE COURT: You mean the loose fitting type things, double pleats in the front, that type thing?

THE WITNESS: Yes, sir. And he was turned kind of like sideways in the seat sitting there.

BY MR. SIMPSON:

Q. You said he turned sideways towards—facing you?

A. Sideways towards me when I asked to check his person.

Q. What did you find when you felt the tops of Mr. Brown's legs?

[32] A. I felt a hard object on both sides in this area right here. And—

Q. Did that appear to be some part of Mr. Brown himself?

A. No, sir, it didn't. It appeared to be something other than that. And I asked him would he mind standing up for me.

Q. Have you found such packages on other persons in other pat downs?

A. Yes, sir, I have.

Q. And in your experience, what do those kinds of packages generally turn out to be?

A. Contraband or a weapon.

Q. And when you asked Mr. Brown if he would mind standing up, what did he do?

A. He politely stood up with no—I mean he stood up.

Q. Mr. Brown, if you would, stand up, please. And lead us through what happened.

THE COURT: He's at the window seat?

THE WITNESS: Yes, sir.

BY MR. SIMPSON:

Q. So there is—the aisle is?

A. Right here, where I am right now.

Q. And he's got to get past Mr. Drayton to get out of the aisle?

A. True.

Q. And I take it there's not a tremendous amount of leg room. [33] How did he get out?

A. I asked him would he mind getting out. And I turned him like this and I look up at Investigator Hoover, who is at the front of the bus, and I told Investigator Hoover to come.

Q. Waving with your right hand waving Mr. Hoover back?

A. And Investigator Hoover come to me, and Investigator Blackburn handed me a pair of handcuffs, and I cuffed him right here, and he walked up to Investigator Hoover, and he walked him off the bus.

Q. Now when you felt the objects on Mr. Brown's —and Mr. Brown, you can resume your seat over here.

When you felt the objects on Mr. Brown's thighs, how did Mr. Brown react?

A. He just kind of dropped his head but didn't say anything.

MR. BLOW: Objection, Judge, this is not relevant to the issue of consent in this case.

THE COURT: Objection overruled.

BY MR. SIMPSON:

Q. You said he dropped his head?

A. Yes, and he didn't say anything. Didn't make any—didn't question me, didn't make any motion, didn't say anything, just dropped his head. And I asked him did he mind standing up, and he did.

Q. And after you dealt with Mr. Brown, what do you do?

A. I went back to Mr. Drayton, "Mind if I check you?" And he [34] did the same thing he's doing right now.

Q. Hands lifted maybe eight inches off his legs?

A. And I patted here and here, and I felt the same thing with him. And I asked him to stand up, and he stood up, and I escorted him off the bus.

Q. Was he also handcuffed before he actually got off the bus?

A. Yes, sir.

Q. And at what point—you can have your seat too, Mr. Drayton. At what point did you check—you may resume your seat also.

At what point did you actually look inside the defendants' pants?

A. We escorted them from the bus area back across the back parking lot of the bus station to the Trailways, from the Greyhound to the Trailways where our vehicles was parked. At that point we began talking—I mean Investigator Hoover was talking to Mr. Brown and I was talking to Mr. Drayton.

Q. And did you have any conversation with him as to why they were taken off the bus?

A. In the process of walking over to the car, I looked at Mr. Brown and I asked him, I say, "Do you

understand why we're taking you off the bus?" something to that notion? I said, "You understand why we're talking you off the bus?"

And he said, "Yes."

Q. And at some point did you find—did you actually [35] physically lay eyes on some contraband?

A. Yes, sir.

Q. How did you get to that?

A. When we got over to that particular place, we read both of them their Miranda rights, and I asked him about what was in his pants.

Q. Asked who?

A. Mr. Brown was the first one.

Q. Okay.

A. And we were over—which the area that we was in was out of the view of the public from the bus station. It was just—it's the parking lot where our cars were, and it was next to the Trailways building. And I began looking in Mr. Brown's trousers, and when I unbuttoned his pants around the truck, I noticed that he had on several pair of boxer shorts. And in between the boxers, taped to his pants, was three bundles of duct tape about this big in diameter.

Q. Holding your fingers up, maybe an inch and a half to two inches high and five inches long?

A. Yes.

Q. And did you eventually open those packages?

A. Yes.

Q. Do I have it correct that Mr. Brown had 483 grams, and Mr. Drayton had about 295 grams in two bundles?

A. Yes.

[36] Q. Now, do I correctly assume from the fact that you had put handcuffs on these men before they got off the bus that you had determined to arrest them at that point?

A. Yes, sir, I did.

Q. Do you have any idea about how many times you have previously found such objects concealed on a person's person?

A. Out of the number of times that I have been, it's been concealed in that area. The majority—let me put it like this, the majority of the times that I found something on someone, that's where it's found. If it's on their person, it's found in that area.

Q. When you find things in that area, would this be something that's happened more or less than ten times?

A. More.

Q. More or less than 20 times?

A. More.

Q. More or less than 30 times?

A. I would say more.

Q. And how frequently does it turn out that you find these kinds of objects, only to discover on actual examination that it's some noncontraband item? How often do you do this and it doesn't turn out to be drugs or weapons?

A. I've never done it, and nothing other than contraband.

Q. Now, when you found the objects on Mr. Brown, as you continued to deal with him and as you deal with Mr. Drayton, [37] once you found something, does your tone of voice change?

A. No, sir.

Q. Do you change from requesting cooperation to directing cooperation, that is you order them around?

A. No, sir, I remain cooperative to him, treat them the same way I've treated them the whole time.

Q. Now, let me ask you, in the time you're dealing with Mr. Drayton and Mr. Brown, up until the time when you find these items, did you do anything to prevent them either from getting out of their seats and into the aisle or getting off of the bus entirely?

A. No, sir, I didn't.

Q. Does it ever happen that people decide to get off the bus while you're conducting one of your programs?

A. Yes, sir, they do.

Q. And what happens when someone attempts to get off the bus and you haven't either finished dealing with them or haven't gotten to them yet?

A. Let them off the bus or turn to the side and let them come past me.

Q. And let me ask you, if you go to work the buses, are there particular times of days when buses converge in Tallahassee?

A. Yes, sir.

Q. What times are those?

A. Usually 5:00 a.m. and noontime.

[38] Q. And at those times, about how many buses will be coming in and out of Tallahassee?

A. At 5:00 a.m, we usually get about six buses in in the morning, and at noontime, we get anywhere from nine to ten.

Q. Will you be boarding all the buses?

A. No, sir.

Q. Why not?

A. I usually—the buses that are heading south, I don't really worry about them, because we don't have a whole lot of time, so I particularly concentrate on the buses that are coming north and traveling west, coming from the south, and they give us an opportunity to check each and every bus that's coming from the south.

Q. If you check all the buses that are coming from the south, about how many buses is that?

A. Four or five.

Q. What kind of time window do you have to work a particular bus?

A. We are on the bus anywhere from 15 to 20 minutes, no more.

Q. What sets the limits on how long you can be on the bus?

A. The driver, and us having enough time to check another bus before it's time for it to leave.

Q. Let me ask you, do you ever stay on the bus so long that the bus has to leave late?

A. No, sir.

[39] Q. Or that the driver is getting impatient?

A. No, sir.

Q. Do you let the bus driver know before you check his bus?

A. Yes, sir.

Q. What if the bus driver said, "I'm half an hour late already"?

A. We don't board the bus.

Q. And when people do decide to get off the bus while you're on it, is that apparently a response to your being there, or what's going on?

A. No, sometimes people get on the bus—we get on—if they got a little bit more time, they want to get back off and smoke, or they want to go back inside for a drink or something like that, realizing they have a little more time. The majority of the time they get back off the bus to go smoke.

Q. Do you ever have situations where—let me back up. If you're working a bus and you've got this 15- to 20-minute window, about how many people can you deal with in that time?

A. We usually do two or three people, but we don't—and that's just long enough to check the two or three people that's on the bus and we get off the bus. We try not to stay on there 15, 20 minutes.

Q. Does it ever happen that people don't want to let you search their luggage or their persons?

A. Yes, sir.

[40] Q. And when that happens, what happens?

A. We just go on to the next person, say, "Have a nice day," or, "I understand, and we would like for your cooperation, but you don't have to." And we'll go on to the next person.

Q. Do you try to argue them into it?

A. No, sir.

Q. Do you threaten them?

A. No, sir.

Q. Tell them you're going to get a search warrant?

A. No.

Q. Do you tell them that an innocent person would let them search?

A. No, I don't. I just leave it be. I just go on to the next person.

Q. Let me ask you. If a person tells you they're not interested in being searched, and you go on to the next person, does that seem to affect what the next person does?

A. No.

Q. And are there occasions when you work buses, say every day for a week, at least one of the shifts?

A. Yes.

Q. And in a week's time of working the buses, about how many people might you expect not to wish to be searched?

A. Maybe one. Maybe one.

Q. Do you exclusively search black people?

[41] A. No, sir.

Q. Do you also search white people?

A. Yes, sir.

Q. Do you also search Hispanic people?

A. Yes, sir.

Q. Do you ever find drugs on white people and Hispanic people?

A. Yes, I do.

Q. Do the people you come in contact with ever comment on the fact that here the police are on the bus checking for drugs and weapons and alcohol?

A. Yes, sir.

Q. What kind of things do people say to you?

MR. BLOW: Objection to the relevancy, hearsay.

THE COURT: Sustained.

BY MR. SIMPSON:

Q. Are the reactions of the people you speak to confrontational?

A. No, sir.

Q. Are there ever situations in which the person wants to ask you about drug interdiction?

A. Yes, sir. I mean lots of time people strike up conversations with us in reference to what we're doing and sometime they tell us that they—

MR. BLOW: Objection to the hearsay.

[42] MR. SIMPSON: Your Honor, this goes to the manner of Mr. Lang, and the reaction he engenders are based upon the manner in which he approaches people, and it's relevant to the whole question of whether he's dominating them or using some show of authority, or

whether in fact this is in fact, as he testifies, a friendly encounter.

THE COURT: So you're saying that the response he gets is relevant on—as to the tone of his voice and his approach to the passengers?

MR. SIMPSON: Yes, sir.

THE COURT: All right, for that purpose I'll let it in.

BY MR. SIMPSON:

Q. Go ahead.

A. They usually ask questions about what we're doing, and do we ever—are we ever successful in reference to what we're doing. And we have people saying that they appreciate it because it makes them feel safe on the bus, so they know that there's no weapons or alcohol or stuff like that, because they feel safe.

Q. Let me ask you, are you aware as a police officer whether there are ever any problems unrelated to your work on the buses? That is, does the police department get calls from the bus station?

A. Yes, sir.

[43] Q. And do you have any idea what frequency the police department gets calls?

A. I would say sometimes three or four a day I get calls.

Q. And what kinds of complaints do y'all get from the bus station?

THE COURT: These are Greyhound people that call you?

THE WITNESS: Yes, sir. They call in reference to—

MR. BLOW: Again, the relevance of this to the consent of these individuals on that bus on that day.

MR. SIMPSON: And it goes to the state of the mind of the passengers when Mr. Lang approaches them and what—as I represented before—whether they do have legitimate fears of people with guns and alcohol and weapons on the bus.

MR. BLOW: There's nothing to suggest that the passengers know what the police are being called by Greyhound employees for.

BY MR. SIMPSON:

Q. When the bus station calls you, is it because the bus drivers complain or the passengers complain, or some of each?

A. Usually—

THE COURT: Let me see. This is when the Greyhound—when the bus people call the police station, and how is that relevant to what happened in this case?

MR. SIMPSON: Your Honor, as I suggested earlier, when the officers arrive, they are viewed by the vast majority of [44] the passengers as their protectors, as people who are helping them. And that explains the passenger's reaction when Mr. Lang approaches them.

THE COURT: Fine, but in this case, is there any indication that it was the driver, or anybody worked for the Greyhound bus lines that called the police, or were they just there—

MR. SIMPSON: No, this is—

THE COURT:—doing their normal stakeout or whatever?

MR. SIMPSON: This was not in response to a call.

THE COURT: Okay. And I heard his testimony as to why the one officer was in the driver's seat looking aft and the other passenger is aft looking forward. I understand all that. But if there's no call on this one, I think Mr. Blow's objection is well taken. I'll sustain it.

Anything else, Mr. Simpson?

MR. SIMPSON: Yes, Your Honor. May I have just one moment, Your Honor?

BY MR. SIMPSON:

Q. Other than the fact that it eventually resulted in the discovery of the cocaine in this case, was your encounter with Mr. Drayton and Mr. Brown in any serious way different from your encounters with the other people you deal with on the bus?

A. No, sir.

[45] MR. SIMPSON: No further questions.

THE COURT: All right, let's take a break for about ten minutes.

(Recess from 10:20 a.m. until 10:30 a.m.)

THE COURT: Please be seated. Mr. Lang back on the stand.

Any questions, Mr. Blow or Mr. Clark?

CROSS-EXAMINATION

BY MR. CLARK:

Q. Mr. Lang, let me ask you a couple of questions about what you've testified about. Now you said on this particular day, February the 4th, that you had your badge in your hand when you confronted Mr. Drayton and Mr. Brown?

A. Yes, sir. I either had—I wear my badge two ways, either around my neck or in my hand.

Q. And is one method more preferable than the other?

A. No. Usually I have two badges. And whichever one I have on me at the time, I use that one. Because I have one I hang around my neck and I have one in my hand.

Q. But you're sure on this particular occasion the badge was in your hand?

A. I'm not exactly sure. It could have been in my hand or either around my neck, but one of the ways I know my badge was present. If it was around my neck I usually have it like this, or if not around my neck, I have it in my hand and I display it [46] like this.

Q. So when you approached Mr. Brown and Mr. Drayton in their seats, then you either leaned over and showed them your badge that was around your neck or you held your hand out?

A. Yes, sir.

Q. And then you put it away?

A. Yes, sir, either it fell back here or either I put it in my pocket.

Q. Where was your gun when this was taking place?

A. It was on this side.

Q. On your right side?

A. Yes, sir.

Q. In a holster or fanny pack or—

A. In a holster.

Q. And it was covered up on this particular day in what manner?

A. I don't recall, but I know it was covered up with either a shirt or a jacket.

Q. You also said that when you get on the bus, Officer Blackburn goes to the rear of the bus, and Officer Hoover stays in the front?

A. Yes.

Q. Does Officer Hoover stand in the aisle on occasion, or does he always sit in the seat?

A. He always sits in the seat.

[47] Q. When do you approach the bus if you have decided you're going to search it? Do you wait until all the passengers have gotten on board?

A. Yes, sir. Usually we—the bus driver will take tickets—I mean before passengers get on the bus, or he'll let all the passengers on the bus and then he'll, you know, walk back and take the tickets. But this particular day, he took the tickets from the beginning, before they got on the bus.

THE COURT: This is at the front door of the bus?

THE WITNESS: Yes, sir.

THE COURT: Front door standing open and the driver is there taking tickets, and then the people get on one at a time?

THE WITNESS: Yes, sir.

BY MR. CLARK:

Q. And how long did you watch the driver take the tickets?

A. At this particular time we had already observed —just observing people in the terminal. We might have checked another bus. We don't sit there and wait on that particular bus until it get full. They start loading buses at one time. And there's like—once they —there's two buses usually being loaded at the same time, or—and whichever ones get finished first and the passengers get settled on the bus, that's the one we'll board.

Q. What is it about—how do you know that everybody is on [48] the bus and the driver is ready to leave that tells you now is the time to search?

A. Before the driver get off the bus, he usually say, "It's all yours," something to that, or either he'll just get off and close the door, and we'll be standing there, and we'll say, "It's all right if we check it?"

And he'll say, "Yes," because at that time he's going into the office there.

Q. What does the driver do when he goes into the office? Do you know?

A. He goes into the office to—if I'm not mistaken, to document how many passengers he have on the bus, how many tickets he's taken, or where they're going, something similar to that, and then he have to call the office in Texas and punch in something over the phone, and then once they finish all the paperwork they have to do, then they come out and board the bus and leave.

Q. How long does that take? Do you know?

A. I'm not sure. It varies.

Q. The driver usually waiting for you when you get off the bus?

A. Sometimes he's standing there when we come off the bus. When we see the driver coming up, we are usually about finished, or we're getting ready to get off the bus anyway.

Q. How many people were on the bus on this particular day?

[49] A. I'm not absolutely sure, but it was in the neighorhood of 25 to 30.

Q. Is that an average size for the people on the bus for the buses you search?

A. Yes, sometimes. It varies.

Q. And how many times—how many buses did you say that you testify that you searched on a day? Four to six?

A. No. If we do one shift, which is at noontime, we usually search four buses, three to four buses.

Q. But there's an earlier shift at 5:00 in the morning?

A. Right. And we don't always come at 5 a.m. in the morning. If we come at 5 a.m. in the morning—if it's a ten-hour day, we work five to three. That day we would do the buses at 5 a.m. and we would do the noon buses.

Q. And would you still search four at noon, if you had searched the buses at 5 a.m.?

A. Unless we got into something else, yes. It's not every day, but yes.

Q. How many buses do you search at 5 a.m. when you do search?

A. Maybe three.

Q. So if you run a type of shift that you're searching at 5:00 and at noon, you're going to search six or seven buses a day?

A. Yes, sir.

Q. And if you don't search at 5 a.m., you're only searching [50] four buses a day?

A. Right.

Q. And how many days a week do you do this?

A. Five days a week—four days a week.

Q. Four days a week?

A. Four to five days a week, yes.

Q. Four to five days a week.

A. Not—well, it's not every day. Sometimes we do it four days. Sometime we're—I mean it differs—not every day. I can't say every day, because sometimes we work the airport and don't get a chance to get to the buses. But say generally three to four days a week.

Q. So if you search seven buses a day, four days a week, then that would be 28 buses for that week, and if you searched four buses for three days, it could be something less?

A. Yes.

Q. All right. And they have, on the average, 25 to 30 people?

A. Yes, sir. Sometime less.

Q. That varies. Sometimes there's more people on the bus?

A. Sometimes there's more. Sometimes there's less.

Q. And you've been doing this for three years, you say?

A. Yes, sir.

Q. And how many people can you remember now in the past year when you approached them and told them who you were and that [51] you were looking for guns and narcotics have told you, "I'm sorry, I don't want you to search me"?

A. I have to give you an estimate. Five or six people.

Q. Five or six people?

A. Yeah, not very many.

Q. And how many people, when you come down the row and start searching them, get up and get off of the bus?

A. That's every day. Somebody is always getting up and getting off the bus when we're coming down the aisle.

Q. Getting on and getting off?

A. When we're on the bus, they're getting up and getting off, the whole time.

Q. Now, when you approached Mr. Brown and Mr. Drayton, you told them who you were, you told them what you were looking for, did you tell them that they didn't have to consent to your search?

A. No, I didn't.

Q. Do you ever tell people that they can refuse?

A. I have told people that they have an opportunity to refuse, yes, but I didn't that particular day, no.

Q. When you tell people that they can refuse a search, how do you phrase that? What do you say?

A. I give the same speech in reference to what I am doing, but at the end I would probably say, "You do have a right to refuse, but I would like for your cooperation," something [52] similar to that.

Q. Okay. Say anything about cooperation to Mr. Brown or anything about cooperation to Mr. Drayton?

A. Yes, sir, I did.

Q. What did you say?

A. Pretty much I introduced them who I was, saying, "I'm Investigator Lang out of Tallahassee Police Department. We're conducting bus interdiction, make sure there's no weapons or drugs on the bus." I said, "We would like for your cooperation. Do you have any luggage on the bus?" And they both pointed above their head.

Q. What was it about Mr. Drayton in particular that made you think he might have a weapon on him?

A. I was actually—at the time my attention was pretty much on Mr. Brown because he was the more—he was more communicative toward myself. And Mr. Brown was being real quiet. He had on a jacket. He wasn't saying a whole lot. He was just sitting there being very quiet, and he had on a big jacket and had on somewhat some baggy type pants. But at the time when my talking, I was talking to Mr. Brown. And Mr. Drayton was just sitting there. He wasn't doing a whole lot of talking. Mr. Brown was.

Q. Did you have any reason to believe that Mr. Drayton was armed?

A. At the time I was focused on Mr. Brown.

[53] Q. I understand that, but I'm just asking you about Mr. Drayton. You asked him if he had any guns on him, could you search. What was it made you think Mr. Drayton had a gun on him?

A. The way he was dressed as far as his clothing and all, I just inquired in reference to the way he was dressed as far as his coat and his pants.

Q. And this happened on February 4th?

A. Yes.

Q. Mr. Drayton is on a northbound bus?

A. Yes.

Q. For where?

A. Illinois or Indiana, somewhere up where it's very cold.

Q. Someplace where it's very cold?

A. Yes.

MR. CLARK: That's all the questions I have of Mr. Lang.

THE COURT: All right. Mr. Blow?

MR. BLOW: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BLOW:

Q. Officer Lang, when you approached these two gentlemen on the bus, you did not do so because you had probable cause at that point in time to arrest them, did you?

A. No.

[54] Q. You did not at that time have probable cause to search them; did you?

A. No.

Q. You did not at that time have any reasonable suspicion upon which to base an arrest or a search; did you?

A. No.

Q. So the sole basis for your search of these individuals was their consent?

A. Yes, sir.

Q. Now, you've been a police officer for over 13 years. During that time you've had any number of training programs; have you not?

A. Yes, sir.

Q. You've completed the basic recruit training and a number of other courses, correct?

A. Correct.

Q. You understand the importance, do you not, sir, of writing police reports?

A. Yes, sir.

Q. And it's important that those reports be completely accurate and truthful?

A. Yes, sir.

Q. It is important that they be complete, correct?

A. I understand that.

Q. Now I'm asking you, isn't that correct?

[55] A. Yes, sir.

Q. And you wrote a report in this case, correct?

A. (Nods affirmatively)

Q. Now, before we go further, let me show you what's been tendered to be the subject of your earlier testimony today as to the report in this matter, and look it over and tell me if that is in fact your report and if it's a complete report.

(Pause)

A. Yes, sir.

Q. Now, you also indicated earlier this morning that you have read the memorandum prepared by the government in this matter where it asserts certain facts and so forth, and it was true and correct and accurate, correct?

A. Yes, sir.

Q. When you boarded the bus on February the 4th of this year, Investigator Blackburn went to the back of the bus first, correct?

A. Yes.

Q. All right. And he made contact with the person on the back seat of the bus?

A. Yes, sir.

Q. Describe that person for us again.

A. I think it was a white male.

Q. But you're sure that it was Investigator Blackburn that did that?

[56] A. Yes, sir.

Q. And did you have any interaction with that passenger?

A. The one directly in front of him I did, yes.

Q. No, sir, I'm talking about the one on the back of the bus.

A. Yes. We were both standing there at the same time, yes.

Q. Did you talk to him?

A. No, sir.

Q. Did you search his bag?

A. No, sir, I didn't.

Q. Well, then you—your police report where you indicate that—and I'll read it to you verbatim. "We proceeded to the rear of the bus and began making contacts with passengers. I spoke with the rear passenger reference his luggage and obtained consent."

A. Yes, sir.

Q. Now did you speak with him and obtain consent for the search of that rear passenger?

A. That might seem contradictory, but I spoke with the rear passenger, as well as he did. Both passengers at the back seat of the bus are in the rear, so that's the reason I said it that way. I didn't say, "on the seat next to the rear." I said "seat in the rear," which I did speak to the one right next to the bathroom in the rear of the bus.

Q. If I understood you earlier, you were telling us you spoke to the one in front of him. Now you're telling us there are [57] two on the back seat?

A. No. If this is the bench on the very back seat of the bus, this is the aisle. This is where—this is one seat where somebody is seating and this is another seat where somebody is seating. Drayton and Brown were sitting about right here. This is the bathroom right

here and there's a seat right here. We're at the back of the bus. He's standing here. He's talking to this gentleman and I'm talking to this one. This is at the rear of the bus.

Q. So the gentleman you were speaking to was not the rear passenger on the bus; is that correct?

THE COURT: Well, if this is done for my benefit, I understand it.

MR. BLOW: Thank you, Your Honor.

THE COURT: I think I understand.

BY MR. BLOW:

Q. When you write these reports—well, back up. When you investigate a crime, you may have other people who are witnesses to what took place; is that correct?

A. Yes, sir.

Q. As well as officers who may have been witnesses?

A. Yes, sir.

Q. And it is always an appropriate process to find out, to get the names and addresses and so forth of those witnesses; is it not?

[58] A. Not on the bus.

Q. I didn't ask about on the bus. I'm talking about people who are potential witnesses.

A. Yes, sir.

Q. Because those people are people that can come in and verify what it is that some other witness has to say, correct?

A. Correct.

Q. Or come in and contradict what someone else has to say about what took place.

A. Correct.

Q. And for instance, in a bus situation like this, people in the adjacent aisles or adjacent seats might be able to shed some light on what the processes were that took place that day, weren't they? Couldn't they?

A. Yes.

Q. And of course you know that; don't you?

A. Yes, sir, I could have.

Q. And you know that because you've been doing this a long time?

A. Correct.

Q. And so you make a choice, a deliberate choice as an officer, however, not to get the names and addresses of those potential witnesses; isn't that correct?

A. No, that's not correct.

Q. All right. If you didn't make the choice, who did?

[59] A. The fact that it just didn't happen. It wasn't a choice that I need to get their name. On that bus people don't like giving out their name and don't like giving out information in reference to what they're doing. So I don't want to inconvenience them at that time.

Q. These are the same people you talked about being so cooperative and so happy to have the police on there, that y'all are doing this, these are the same people that don't want to give you their name and tell you where they live?

A. I didn't say they don't want to give me their name. I said that we don't want to inconvenience them, because that adds into us spending more time on the bus. And people, they'll talk to you, yes, but if I get into asking them their name, then they're more reluctant for me to talk to them about whatever I'm talking to them about.

Q. Beyond the ones where you're making a cursory check, once you've actually made an arrest, as in the people in the adjacent seats. Obviously you made arrests. They saw you handcuffing two guys and take them off the bus, right?

A. Right.

Q. So how much longer would it have taken you to then ask the people in front, behind and to the side for their names and addresses because they're potential witnesses?

A. It wouldn't take me that long.

Q. Now, you indicated that Investigator Hoover was at the [60] front of the bus, and I believe you indicated that he was kneeling in the driver's seat; is that correct?

A. That's correct.

Q. Kneeling with his arms on the back of the seat watching passengers; is that correct?

A. Yes, sir.

Q. And you distinguish between kneeling in that seat and sitting in that seat?

A. Kneeling, sitting, usually one of the two. He's there in that seat, kneeling or sitting.

Q. So what you're talking about then when you say he was kneeling on the seat is what part of the process is as opposed to what you specifically remember about that particular day?

A. Kneeling.

Q. All right. So it's your testimony under oath today that on February 4th, he was kneeling in that seat?

A. That's my testimony.

Q. And you have adopted the statement of Mr. Simpson as being truthful and accurate, correct?

A. Yes, sir.

Q. Including wherein on Page 3 it represents that Investigator Hoover was sitting in the driver's seat?

A. He was kneeling in the driver's seat. My mistake.

Q. Assuming he was in fact kneeling in the driver's seat, the function of the Investigator Hoover is to watch the people on [61] the bus?

A. Yes.

Q. And what is he looking for when he's watching the people on the bus?

A. He's just observing reactions of the people, and he's looking for our safety, my safety, from the front.

Q. When you say observing their reactions, now, if I am seated on the bus and I am—got my hands down below the seat, he can't see my hands, right?

A. Right.

Q. So he is observing primarily either gross body movement, whether I get up or move about, or facial expression; is that correct?

A. He's observing passengers, reactions to whatever they do, hand movement, face reactions, sudden movements, period. He's observing them.

Q. And he can see those passengers seated on that bus?

A. From where he's seated, yes, he can see the ones that he needs to see.

Q. The view of Investigator Hoover from that seat is unimpeded, correct? He's got a clear view of everybody on the bus?

A. Not of everybody, but the ones—where I am, he's got a clear view of me, that he can observe and the people around me.

Q. You and the people around you?

[62] A. Yes.

Q. Including the people sitting there that you're talking to?

A. The ones that I'm talking to, yes, he has a clear view.

Q. Now, when you asked Mr. Brown for consent to search his person, you indicated to him, did you not, sir, that the purpose in wanting to search his person was for a weapon; isn't that true?

A. I said weapons and drugs.

Q. Didn't you ask him just for consent to search for a weapon?

A. I don't recall. Could I take a look at my report?

Q. Would you answer the question first?

A. I said I don't recall.

Q. Well, then what you prepared in your report on the same day of that arrest, February the 4th, 1999, would then be an accurate recitation of the events?

A. Yes, sir.

Q. That was when your memory was fresh about what took place?

A. Yes, sir.

(Pause)

Q. Ask the record to reflect I'm showing the officer his police report.

THE COURT: Yes, sir.

THE WITNESS: Okay.

BY MR. BLOW:

[63] Q. Now in the report that you wrote immediately after this arrest, that you've agreed that that was accurate, you indicated in there that, "I asked for permission to check their person for weapons." Period.

A. Uh-huh.

Q. That is correct, that is what your report reflected, and that is in fact what took place; is it not?

A. That is correct.

Q. So at that point—well, strike that. So you asked for limited authority to search for a weapon?

A. Uh-huh.

Q. Now, you have found drugs concealed, as you found them in this case, on any number of prior

occasions, 30 or more prior occasions you've recited, correct?

A. Yes, sir.

Q. And when you've felt this object on either side of the groin in Mr. Brown's pants, you immediately suspected you had found some more drugs; didn't you?

A. Yes, sir, I did.

Q. You weren't seriously concerned about whether this was a sawed off shotgun or something stuck in his pants; were you?

A. I knew it wasn't him, and I knew it was a possible weapon, so—

Q. Well, officer, are you trying to tell us that at that point you did not suspect it was drugs?

[64] A. No, I didn't say that.

Q. So you did in fact suspect you had found yet another—No. 31 or whatever—drug courier on a bus?

A. Yes, sir.

Q. And when you asked them for authority to check their persons for a weapon, you did not tell them that they had the right to consent—or a right to refuse; did you?

A. No, sir, I didn't.

Q. You did not tell them they had the right to get up and leave the bus; did you?

A. No, sir, I didn't.

Q. When you asked them—when you explained why you were there, and asked for their cooperation, you did not stop and ask for an answer to cooperation; did you?

A. I was given, immediate.

Q. What you have told us earlier is that you explained your purpose, asked for their cooperation and asked if you could search their persons?

A. Uh-huh.

Q. Is that correct?

A. That's correct.

Q. You went straight in from one end to the other. There was never a question, "Will you cooperate?" was there, sir?

A. No, sir.

Q. So you expressed your desire to have their cooperation and [65] then immediately ask, May I search your person, or search your bags?

A. I was immediately given permission.

Q. You asked the question first; didn't you?

A. Yes. And I was immediately given permission.

Q. Now, at this point in time Blackburn had come up from the back of the bus, was in fact standing next to you; was he not?

A. Yes, sir.

Q. So he was not still at the rear of the bus as you testified earlier?

A. I said—you know at this time he came up because I asked for him to.

THE COURT: How many passenger rows were there from the—

THE WITNESS: Three. I mean you're talking from —if I may show you, this is the rear of the bus—

THE COURT: That's what, is that the bench seat or not?

THE WITNESS: Yes, this is the bench seat. Say this would be where the bench seat would start. It would be like this, and the seat would be right here. Blackburn is usually standing right here in front of the bathroom, and I was standing right here. (Indicating)

BY MR. BLOW:

Q. When you patted down Mr. Brown and detected something in [66] his groin area, you did not ask him what it was?

A. No, I didn't.

Q. And the next thing you did was ask Mr. Brown, quote, did he mind standing up for you, end quote?

A. Yes.

Q. And he stood up?

A. Yes, sir.

Q. He didn't say anything, he just stood up?

A. Yes, sir.

Q. Do you have photos of these packages?

A. No, I don't.

Q. They were not photographed?

A. Yes, they were photographed. Yes, they are photographed.

Q. Now, you indicated that you have occasion when people do refuse to allow you to search, correct?

A. Correct.

Q. I think you indicated about one a week?

A. Some—yes, I guess I could say one every—

Q. There's nothing—there is nothing about that fact, the fact that some people do occasionally refuse, that is communicated to the passengers on this bus; is there?

A. No, it's not.

Q. So these passengers have no way of knowing that in fact once a week somebody does refuse and presumably nothing happens to them?

[67] A. No, it doesn't. I didn't.

Q. And thus, the overwhelming number of passengers therefore consent?

A. The majority of them consent, yes, sir.

Q. After you patted down Mr. Brown's groin and you detected something in his groin area, you did not ask him what it was, you asked him to stand up, you didn't explain to him why your suspicions were aroused at that point; did you?

A. No, I didn't.

Q. You did not give him an opportunity to allay your suspicions?

A. No.

Q. Or to decide at that point whether he had had enough of this and no longer wished to cooperate?

A. No, I didn't.

Q. Now you have indicated to us that, in fact, on occasion you do tell people they don't have to consent, correct?

A. Yes, sir.

Q. So there is nothing that prevents you from doing that?

A. No, sir.

Q. It doesn't impose any additional burden on you to do that; does it?

A. No.

Q. It doesn't delay the bus any longer?

A. No.

[68] Q. In fact, what would it take, three seconds, five seconds to tell people that?

A. Whatever you say, three to five seconds.

Q. And in fact the reason that you as a general rule prefer not to do that is because you want people to think they have to cooperate with you?

A. No.

Q. You want them to feel compelled, under those circumstances, on that cramped bus, to do what you want them to do?

A. That's not true. That's the reason I ask.

Q. You indicated earlier in response to a question by Mr. Simpson that the people on the bus are not confrontational with you, correct?

A. Right.

Q. Be a fair assertion, would it not, sir, that it doesn't pay to be confrontational with the police; does it? It's not healthy; is it?

A. It doesn't work for everybody.

Q. Police officers don't take well to being—to confrontational people; do they?

A. I take well to confrontations.

Q. Do the passengers on that bus have any way of knowing that?

A. Through the ones that I talk to, yes.

[69] Q. Do the rest of those passengers have any way of knowing—how do they know from talking to you that if they get confrontational with you and tell you, "I don't want to cooperate, it's none of your business, get out of my face," how are you going to react to that?

A. I say, "Fine." Usually when someone does not want to be searched, or having a bad day, or they don't want to be bothered, usually they are some confrontational when they say, "No, you're not going to search my stuff."

I just say, "Fine," and then I go on about my business.

Q. But the passengers on that bus that day have no way in the world of knowing what your prior experience has been?

A. No.

Q. So when you approach these people on the bus, you show them your badge, correct?

A. Correct.

Q. And that's so that they will know that you are the authority?

A. Yes.

Q. All right. You tell them what it is you want to do?

A. I tell them who I am, what I am doing.

Q. Yes. You identify yourself as an agent?

A. Yes, sir.

Q. And you announce to them, you tell those folks, "I'm on here, I'm checking for drugs," or whatever, "I want your [70] cooperation." You announce your purpose, right?

A. Very politely.

Q. Well, I appreciate that it's politely, but the fact of the matter is, you tell them what it is you want?

A. I tell them who I am and what I am doing. And then I ask for cooperation.

Q. And that is what you want, correct? You want their cooperation?

A. Yes, I want their cooperation.

Q. Because without their cooperation, you got no right to search them?

A. Exactly.

Q. And assuming they're going to cooperate with them, you tell them what you want to do, you want to search their bags?

A. Yes.

Q. And then you proceed to ask them, "Do you have a bag?"

A. Yes.

Q. And fortunately for conducting these type searches, what you've described earlier as the overwhelming majority of these people in fact believe they have a duty to cooperate and are cooperative with you?

A. Yeah. Most of those people, I mean, don't have a problem with cooperating because they feel—

Q. You don't know how they feel, you just know that they cooperate, right?

[71] MR. SIMPSON: Your Honor, I would ask the witness be allowed to finish his questions. Mr. Blow is asking compound questions and jumping in when the officer is midway through answering.

THE COURT: I think he can handle it, but let's see if we can get this record clear here. So let him finish, and Mr. Lang, let him finish his question before—let's back up. And did you say everything you wanted to say?

THE WITNESS: No, sir. What I was about to say, when people are—when they ask or when I ask them for cooperation, they usually give their cooperation with complimentary answers saying that they're glad for me to—for the police to be on the bus checking for drugs and weapons because it makes them feel safe on their trips, and they're glad to see that this is happening. They're not confrontational about it. And the ones that don't want to be bothered, don't want to be bothered, they say so, and we continue and move on.

BY MR. BLOW:

Q. But you agree with me, do you not, sir, that what you've described as the overwhelming majority of these people feel it is their duty to cooperate with you and therefore cooperate?

A. Willingly, yes.

MR. BLOW: No further questions, Your Honor.

THE COURT: Any rebuttal questions, Mr. Simpson?

REDIRECT EXAMINATION

[72] BY MR. SIMPSON:

Q. Mr. Lang, do you in any fashion tell people that they have a duty to cooperate?

A. No.

Q. Tell them that they're required to cooperate?

A. No, sir, I do not. I ask with politeness and kindness, hoping for their general appearance to cooperate with me on their own.

Q. And generally people do?

A. And generally people do, with no objections.

Q. Mr. Blow at one point asked you about searching the defendant's groin areas. Were you searching the area, the male private parts?

A. No, sir.

Q. Were you searching an area where weapons could be concealed?

A. Yes, sir, I was.

Q. Have you on occasions found weapons concealed on bus passengers?

A. Yes, sir, I have.

Q. Did you go any further than you would have needed to gone to check for weapons?

A. No, I didn't.

Q. Now, you talked about—were asked about Mr. Hoover's observations from the front of the bus. Are there occasions [73] when Mr. Hoover reports to you that somebody is reacting obviously to your presence?

A. Yes, sir.

Q. Does that tend to focus your attention on that person?

A. Yes, sir.

Q. And make him one of the persons that you will contact on that bus?

A. Yes, sir.

Q. Do you happen to remember how many seats there are on the bus, how many passenger seats?

A. Forty-seven. The majority of them are 47, and now they have some 55.

Q. And let me ask you, the fact that you did not get the names and addresses of passengers in the same area of the bus, were you trying to cover up anything, hide anything?

A. No, sir.

Q. Were there any of those people that would have been able to give you any additional information about whether these men were actually carrying cocaine in their underwear?

A. No, sir.

Q. And I think one of the attorneys started out asking you a question phrased in terms of what you were doing or how you proceeded when you confronted the defendants. Did you see this as a confrontation?

A. No, I didn't.

[74] Q. Any raised voices?

A. No, sir.

Q. Any threats?

A. No.

Q. Any orders?

A. No.

Q. Any physical address?

A. No, sir.

MR. SIMPSON: No further questions.

THE COURT: Let me ask you, Mr. Lang. This bus was coming up from South Florida.

THE WITNESS: Yes, sir.

THE COURT: Do you know whether—which passengers are through passengers? In other words, I guess when they pull into Tallahassee for—obviously for those people who are going only to Tallahassee, they get off the bus, claim whatever checked luggage they have and leave?

THE WITNESS: Yes, sir.

THE COURT: And the ones who are going through to whatever the next stops may be would get off, I guess go in and use the—as you say, maybe take a smoke or go in the terminal, or do whatever, make a phone call, go to the bathroom, get a bite to eat, until the bus is ready to depart.

THE WITNESS: Yes, sir.

THE COURT: Are you able to distinguish which ones are [75] through passengers and which ones are—are the ones that boarded—got on the bus for the first time in Tallahassee?

THE WITNESS: The way it works, sir, usually we arrive at the bus station around 12:45—I mean 11:45, correction. And buses started coming in at 11:45, the ones from out of town. We're in an area to observe people get off the bus and watch them. They usually—if they get off the bus, they stand there on the outside, if they're coming to Tallahassee, until they retrieve

their luggage. They either go inside and make a call for a cab, or either they walk straight down to the west side of the building and wait for a cab there.

The other ones, everybody have to go inside of the bus terminal before they're supposed to reboard the bus, or either you go to—

THE COURT: Does the bus require them to get off the bus?

THE WITNESS: Yes, sir, everybody is required to get off the bus.

THE COURT: Is that a bus company regulation and not something of Tallahassee Police Department, or—

THE WITNESS: No, that's bus company policy. When they get in Tallahassee, they refuel the buses, they mop the buses, sweep them out and change the toilet.

THE COURT: Is that 5:00 in the morning or noon? Doesn't make any difference?

[76] THE WITNESS: Doesn't make any difference. Tallahassee is the hub. When they get to Tallahassee, all buses are swept out, mopped and they put in—they make sure they get all the trash off the bus and change all that.

THE COURT: What happens to the overhead luggage?

THE WITNESS: If you're going to stay on that bus because you're going —

THE COURT: On further?

THE WITNESS: On further, you can leave it on the bus, or you have people that take it off the bus. And usually when you get off the bus, the driver will give

you an additional tag that you're going to stay on this bus, and it means that you can retrieve your seat before everybody else.

THE COURT: That's your boarding pass to get back on, right?

THE WITNESS: Yes, sir. And the ones that don't have a boarding pass, they have a ticket where they're starting in Tallahassee to get on the bus.

THE COURT: So you're watching until the bus driver tells you he's got everybody on board?

THE WITNESS: Yes, sir.

THE COURT: On this particular occasion?

THE WITNESS: Yes, sir.

THE COURT: Did you have anybody targeted or anything like that?

[77] THE WITNESS: No, sir. I just observed them because of what they were wearing, and the weather wasn't that cold in Tallahassee at the time.

THE COURT: And your understanding this bus was going on up to the Midwest somewhere?

THE WITNESS: Yes, sir, I understood that. But I mean the weather was to a point where it was uncomfortable to wear that type of clothing here in Tallahassee. I mean, you would have either taken it and put it in your hand.

THE COURT: But you yourself had on kind of a—

THE WITNESS: Big shirt or jacket. That's to conceal my weapon.

THE COURT: So what was then unusual about them having a jacket on or something like that, if you were wearing one?

THE WITNESS: Mine was somewhat of a light shirt, just a shirt, which is not insulated, like a leather jacket that he had on. And the other guy had on a bigger jacket.

THE COURT: I, of course, heard your testimony from the questions that were asked by the lawyers. As I understand it, once you got Mr. Brown and Mr. Drayton off the bus, then there was no more questioning. You were all off the bus; is that right?

THE WITNESS: Yes, sir, we were off the bus.

THE COURT: And if there had been somebody else on the bus that might be carrying contraband, they got a pass go out [78] of Tallahassee; is that right?

THE WITNESS: That's right. There is only three of us, and usually—sometime if the bus is not—if the bus driver—like if we get on the bus and find someone with drugs right away or something, I will usually pass them up to Investigator Hoover, and if the bus driver isn't standing there, then we'll go ahead and check one or two other people, but if so, then we just get off the bus and take what we got.

THE COURT: Do you prefer black or African American?

THE WITNESS: Doesn't matter.

THE COURT: All right. Does the fact that you and Mr. Brown and Mr. Drayton were of the same racial makeup, would your attitude or approach to them be any different than it would to, say, a white person,

whether male or female, or an Hispanic person, either male or female?

THE WITNESS: No, sir. As a matter of fact, when I'm checking people on the bus, I make it a point to talk to a white male, black male so it would not seem as if I'm picking on one particular race. I make it a point to talk to people on the bus in that general so it won't be that way.

THE COURT: So you were asked about the procedure that you use. What do you do with females? I don't know the other two officers involved. I take it they're both males; is that right?

THE WITNESS: Yes, sir.

[79] THE COURT: What do you do when you have a suspicious female, or somebody who hands you over a bag and it's got something in it, or some skinny female wearing clothes that are obviously many times her size and that might make you suspicious, or carrying a handbag that makes you suspicious?

THE WITNESS: I approach females the same way in reference to where they're coming from. If they have luggage in the immediate area, or concealed close by them, I give them the same—I go through the same spiel as far as identifying myself and ask them and tell they what I am doing. I ask can I check their luggage, being if it's a purse or a bag.

THE COURT: But you wouldn't be patting the breast area or the—

THE WITNESS: No, sir.

THE COURT:—or the lower abdomen of a female?

THE WITNESS: No, sir. If it's a jacket or something that will arouse my suspicion, I mean, pulling the jacket away from her body and shaking pockets is nothing out of the ordinary, but, no, I don't physically check females that way.

THE COURT: Now when you got on that bus that day, you, Mr. Hoover or Mr. Blackburn, did you all walk on with your badges up and say, "Hey, folks, we're from Tallahassee Police Department. We want to make sure that your travel on this interstate carrier is safe and secure, so we're going to work this vehicle from the back of the bus forward and we want your [80] cooperation?" Anything like that?

THE WITNESS: No, sir. We boarded the bus just like we were passengers, with the exception of Investigator Hoover seating himself in the front seat, and proceeded to the back. As a matter of fact, on our way back on some buses—not this particular day, but people still are getting up and walking to and from the bus, or either still putting up packages sometimes. We try to wait until they put up everything so we can walk freely without anybody being in the way.

THE COURT: As far as you know, was everybody who was going to leave Tallahassee on that bus already on board?

THE WITNESS: As far as I know, yes, sir.

THE COURT: Was it—did you get some indication from the driver, or did he button up the bus or what?

THE WITNESS: The way that happens is after everybody that was in the line, which was inside of the terminal, get on the bus, and he take all of the tickets, he usually is up front writing something on the pad. He'll step down off the bus, he'll look at us and say, "It's

all yours." He'll walk into this other room and process some paper, or document how many passengers he has or call—

THE COURT: Is that what happened that day; do you recall?

THE WITNESS: Yes, sir, pretty much. After he got through taking the tickets, everybody was on the bus seated.

[81] THE COURT: Do you recall whether they announce it on the loudspeaking system in there, bus for Montgomery, or Birmingham, or Nashville, or wherever it goes from here to get to the Midwest?

THE WITNESS: They announce it at the beginning, before he start taking tickets.

THE COURT: And that's the call to people to get on the bus, either through passengers to get back on, or the new passengers to get ready to surrender their tickets?

THE WITNESS: Yes, sir. They will say, at this particular time we'll be boarding passengers for this particular bus, and then they'll go through a list of cities where it's going to be going.

THE COURT: Now, do you ask the people for their tickets?

THE WITNESS: No, sir, I don't.

THE COURT: Do you ask them for any kind of identification?

THE WITNESS: No, sir.

THE COURT: Do you ask them for a name?

THE WITNESS: No, sir.

THE COURT: You merely—your badge, does it have your name on it, or just a number?

THE WITNESS: Just the city—well, the State of Florida, City of Tallahassee.

[82] THE COURT: It's a badge and not a police I.D. or anything?

THE WITNESS: No, it's a badge.

THE COURT: And all you just say, I'm—do you give your name or anything?

THE WITNESS: Yes, sir, I usually—my spiel is usually, when I board the bus—

THE COURT: Tell me what you did this time.

THE WITNESS: When I got to them, I said, "Hi, I'm Investigator Lang. I'm Tallahassee Police Department. We're attempting to deter illegal contraband or drugs or weapons from being transported on the bus." I said, "I would like for your cooperation," something similar to that. "Do you have any luggage on the bus?" And they pointed up.

And I said, "Do you mind if I check your bag for weapons or drugs?"

And he said—Mr. Brown said, "Okay."

And I took the bag and I handed it to Investigator Blackburn, and I went from there back to Mr. Brown in reference to a weapons check, and that's when he opened up his coat, pointing—he opened up his coat, took out his cell phone and opened his—turned around toward me with his jacket open, and I went from there.

THE COURT: Okay. And when you took them off the bus, you mentioned that you had them handcuffed

one at a time, I [83] guess. Blackburn take Mr. Brown off, or was it Hoover?

THE WITNESS: Hoover took Mr. Brown off.

THE COURT: And you took off—

THE WITNESS: Mr. Drayton.

THE COURT: Was there any big commotion in the aisles or anything?

THE WITNESS: No, sir. It was just—to be honest with you, sir, it was calm—I mean, it was real calm. It was nice. Nobody said anything. People were looking. Nobody—there was no confrontation between myself, Mr. Drayton, Mr. Brown. I actually felt real good about the way it happened. They gave me no confrontation about nothing that was said. They was very cooperative. As a matter of fact, they were almost too cooperative, if you ask me.

THE COURT: Was there any announcement to the people on the bus or anything like that? Did you say anything as you were leaving?

THE WITNESS: No, sir. I just escorted them off the bus.

THE COURT: How much after that, if you know, when the bus left?

THE WITNESS: I don't even know. I was out in the back parking lot. I retrieved their luggage from underneath the bus, because they had luggage underneath the bus.

THE COURT: You mean checked luggage?

[84] THE WITNESS: Yes, sir. Retrieved their checked luggage from underneath the bus, and we got

that, and they gave him his ticket back, I think, and they left.

THE COURT: Counsel, have any additional questions on anything I may have asked that wasn't already covered? If not, then Mr. Lang, you can step down.

MR. BLOW: I do, I was waiting on Mike.

RECROSS EXAMINATION

BY MR. BLOW:

Q. Investigator Lang, you were talking about your suspicions being aroused because they had jackets on on the bus, correct?

A. Yes, sir.

Q. Now, as we sit here in this courtroom today, it's got to be 70 or better degrees in here, correct?

A. Yes, sir.

Q. And as these defendants sit here today, one is sitting at the table with an insulated nylon jacket on, and the other is sitting here with a long-sleeved sweater on; is he not?

A. Yes, sir.

Q. You wouldn't find that unusual; would you?

A. Somewhat his jacket I do, because it's not like more of a suit type. Personally I do.

Q. You find simply the fact that he's sitting here with a jacket on suspicious?

A. No.

[85] Q. And the fact that it's somewhat cool outside this morning might justify him having his jacket; might it not?

A. Yes.

Q. And the fact that riding on a bus, particularly if you're seated next to the window, where the air conditioning is blowing out, it might get cold on that bus; mightn't it?

A. Yes, sir.

Q. Especially if you sit there for a long period of time?

A. Yes, sir.

Q. Might very well be a real good reason to have a jacket on irrespective of what the temperature is outside, right?

A. Yeah.

Q. So in and of itself, that's nothing suspicious, correct?

A. It was suspicious to me.

Q. But absolutely explainable?

MR. SIMPSON: Objection, argumentative. And, Judge, we're not claiming there was probable cause or reasonable suspicion. This is a consent search.

THE COURT: Proceed.

MR. BLOW: Your Honor, I wish to tender into the record as a defendant's exhibit this matter of the police report that he's previously identified and we've used to cross-examine him on.

MR. SIMPSON: No objection.

THE COURT: It's received, Defendant's Exhibit 1.

[86] (Defendant Exhibit No. 1 received in evidence.)

BY MR. BLOW:

Q. Do you have a specific recollection today of whether you had your badge in your hand versus the badge on the neck chain?

A. No, I don't.

Q. So it is quite possible that you had your neck chain on that day as opposed to a badge in your hand?

A. Yes, sir.

Q. Either way, it was clear to the people on the bus that you were law enforcement officers?

A. To the—yeah, to the ones that I was talking to at that time, yes.

Q. And all of you have your identification, your badges, right?

A. Yes, we do.

Q. And although you did not get on the bus and make—as you described—or as the judge described it—hold your badge up and make a general announcement to the bus, as you approached each seating area, you did make an announcement, if you will, a general announcement to the people in that row of seats of what your purpose was?

A. I spoke directly to that particular gentleman. He knew who I was talking to. It wasn't an announcement, no.

Q. There's two people seated in the row of seats, correct?

A. Correct.

[87] Q. And when you approached those two people, you identified yourself as a law enforcement officer, correct?

A. Correct.

Q. You showed your authority, your badge?

A. Correct.

Q. All right. You identified yourself by your authority, correct?

A. Correct.

Q. You told them what it was you wanted?

MR. SIMPSON: Your Honor, I object. This is repetitious. This is argumentative, and among other things I've got a jury selection with another court at 1:00. And I expect Your Honor to take a reasonable time to handle this, but I don't have time for Mr. Blow to make his closing argument as he repeats the questions he's asked before.

THE COURT: Try again, Mr. Blow.

BY MR. BLOW:

Q. You tell the people seated there what it is you want, correct?

A. Yes.

Q. And you tell them—you then proceed to tell them what you're going to do, you ask them if they have bags?

MR. SIMPSON: Objection, Your Honor. This is precisely the same question that Mr. Blow went into at the conclusion of his last series of questions, and it's well [88] beyond any direct that the government asked.

THE COURT: Sustained.

MR. BLOW: No further questions.

THE COURT: Any questions, Mr. Clark?

MR. CLARK: No, Your Honor.

THE COURT: How about you, Mr. Simpson?

MR. SIMPSON: No, Your Honor.

THE COURT: Any further evidence?

MR. SIMPSON: None from the government.

THE COURT: How about from the defendants?

MR. BLOW: May we have just a moment to confer, Your Honor?

THE COURT: We'll just stand down for just a second. No recess, we'll just be at ease for a minute.

(At ease)

THE COURT: All right. Please be seated, everyone. The government announced it has no further witnesses. What say the defendants?

MR. BLOW: None for Defendant Brown.

MR. CLARK: No further witnesses, Your Honor.

THE COURT: Anybody care to be heard briefly?

MR. SIMPSON: Briefly, Your Honor.

THE COURT: Do I just run the instant replay?

MR. SIMPSON: The Supreme Court said there are no per se rules, you look at the totality of the circumstances. [89] If you look at the totality of the circumstances here, there is no coercion. There is an identification with a badge. I will disagree with Mr. Blow that it is a show of force or a show of authority, but the officer certainly makes sure that the people he's talking to knows he's a cop, tells them he would like their cooperation, and when asked politely, they cooperate, and the Supreme Court says that's fine.

THE COURT: All right.

MR. CLARK: I'll try to be as brief as Mr. Simpson. Usually—

THE COURT: We're all going to miss lunch then.

MR. CLARK: Usually I don't have any problem. But as the court knows, the Supreme Court has held in Florida vs. Bostick that bus searches are not, per se, unconstitutional, but the Eleventh Circuit, as well as the Supreme Court, found it significant that in Bostick, the officers did tell Mr. Bostick in that case that he had a right to refuse the consent to their search. Also, it found significant that they did not threaten him with any sort of gun.

But the court did say that the fact that he was on a bus was a factor that could be taken into consideration by the courts. And in Guapi, and in the United States vs. Washington, which are both Eleventh Circuit cases, the Eleventh Circuit has considered just that matter, the fact that these were bus searches that were—these were searches that were on buses, [90] that the people on these—in these two cases, Mr. Guapi and Mr. Washington were not threatened in any way by the police by weapons, but also that in both of the cases Guapi and Washington, they were not advised that they had a right to refuse to consent to the search, and the Eleventh Circuit found in both of those cases that the resulting searches were unconstitutional and threw out the evidence that was seized in the case.

I think it's very significant and the court should take note that Mr. Simpson's response to our motion, on Page 12 of his response, he said that probably the best evidence of the coercive nature of these tactics came from the officer himself, who searched 28 or more buses

—and I believe he's referring to Guapi in this statement —he searched 28 or more buses each week, and could remember only a few times when the passengers had refused to consent to the search.

Well using Mr. Simpson's own words, we can refer to Mr. Lang's testimony today, Your Honor, where he said that he searched four to seven buses a day, sometimes four to five times a week, with an average of 25 to 30 people on the bus. So if I want to do the math and use four buses a day, and disregard the additional three, because that's going to probably factor out in the average, four buses a day, times five days a week, times 52 weeks a year, results in 1,040 buses that Mr. Lang and Mr. Hoover and Mr. Blackburn have searched. [91] Now with 25 people on each bus, on average, and the fact that Mr. Lang has been doing this for about three years, he has had the opportunity to interact, if you will, with 78,000 people, of which he says he can remember five or six people who refused. So five or six people out of 78,000 is less than one 100th of one percent. In fact one 100th of one percent would be 7.8 people. So he's even—that's a very, very minute number of people have taken the opportunity to say, "I'm sorry, Mr. Lang, I don't want you to search me."

In the other Eleventh Circuit cases that Mr. Simpson cites, United States vs. Fields and United States vs. Hammock, in both of those cases, the Eleventh Circuit upheld bus searches. But it's also significant in those two cases, the Eleventh Circuit found that the officers had advised the passengers that they had a right to refuse.

In Washington and in Guapi, the police have appeared in uniform, they've appeared out of uniform. They've made announcements from the front of the bus.

They've started their searches from the front of the bus, they've started the searches from the back of the bus.

The only difference we have in Washington and our case today is the fact that Mr. Lang, instead of making an announcement to the general populous on the bus that he was from Tallahassee Police Department, addressed each person individually. And as he said, he was talking just loud enough [92] for that particular person to hear what he was saying. So it should come as no surprise that when he leans over Mr. Drayton and announces that he's Officer Lang with the Tallahassee Police Department and shows a badge, that's a show of force—or show of authority rather, and he has probably surprised Mr. Drayton, since Mr. Lang has testified nobody else could hear what he was saying except the person he was talking to.

And Your Honor, I would suggest that when a person is addressed that suddenly by a law enforcement officer, he has even less time to reflect on what he's going to do than if the officers make an announcement from the front of the bus.

I would say that this case is not unlike Washington. It's not unlike Guapi. The Eleventh Circuit has made it fairly clear that they're going to insist that police officers tell the passengers they have a right to refuse the search or they're going to find the searches illegal. And I think you should do the same thing.

THE COURT: Mr. Blow?

MR. BLOW: Your Honor, I would like to start as far as the legal analysis with Bostick in the United States Supreme Court. We have heard and it has been characterized as saying that there is no per se rule that

someone must be told they have a right to refuse to consent. And you may recall when we had a detention hearing, and there was some brief interchange about this, and how the Eleventh Circuit could seem to adopt [93] such a per se rule.

I have subsequently gone back and looked at Bostick, and Bostick does not so hold, I submit to the court. I submit that what Bostick holds number one, you got to remember the fact of the Florida Supreme Court.

THE COURT: The Eleventh Circuit says that's what it says, at least the majority in Washington said that's what it says.

MR. BLOW: What Bostick dealt with out of the Florida Supreme Court was a decision of the Florida Supreme Court saying that when you get on the bus in this fashion, that that constitutes a seizure, that act constitutes a seizure. Reading from Bostick, the Supreme Court said that the Florida Supreme Court—talking about the argument made by the defendant—found this argument persuasive, so much so that it adopted a per se rule prohibiting the police from randomly boarding buses as a means of drug interdiction, a per se rule against boarding the buses.

The state court—Florida Supreme Court that is—erred, however, in focusing on whether Bostick was free to leave rather than on the principle that those were intended to capture.

So the Florida Supreme Court went too far because they said we're just going to say all of such bus stops are in fact seizures, and that then places an almost impossible burden on [94] the government. And that is the problem with the Florida Supreme Court's rationale when it got up to the U.S. Supreme Court.

The U.S. Supreme Court does not say in that opinion that we are ruling out any possible per se requirements of telling them they have the right to consent. It doesn't get to that. It never addresses it. It says that the crucial test is whether, taking into account all the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he is not at liberty to ignore the police presence and go about his business. That's not a new standard. That's basically been the standard in what are described as consensual type encounters.

So I just want to get to that issue first. And notably, the Supreme Court did not decide any of the facts in Bostick, as to whether in fact it was consensual or not. They refrained from doing that.

THE COURT: Well, let's see. And you stopped your quote, but the next paragraph, seems to me—

MR. BLOW: Next paragraph or next sentence, Judge?

THE COURT: The next paragraph. "For example, the mere fact that Bostick did not feel free to leave the bus does not mean that the police seized him. Bostick was a passenger on a bus that was scheduled to depart. He would not have felt free to leave the bus even if the police had not been present. [95] Bostick's movements were 'confined'"—and that word is in quotes—"in a sense, but this was the natural result of his decision to take the bus." It says nothing about whether or not the police conduct at issue was coercive.

MR. BLOW: We're not reading from the same place, Judge. I'm reading in the paragraph that has numeral 4 beside it, starting on—

THE COURT: I'm reading from U.S. Supreme Court Reporter.

MR. BLOW: Should be—

THE COURT: You had read—

MR. BLOW: Should be at Page 437 of the opinion, where I was reading.

THE COURT: I'm reading from 436.

MR. BLOW: In any event, we are in agreement that we remain with the totality of the circumstances, and that whether it's on a bus is a valid circumstance that can be taken into consideration. We then go from there to the Eleventh Circuit, which says that this is not only a circumstance, it is a significant circumstance because it is a coercive environment.

The Eleventh Circuit in Guapi—

THE COURT: I think they found in Guapi and Washington—at least in Washington, two of the three judges felt that way.

MR. BLOW: When you get to Washington—let me [96] address first Washington. Of course Washington, I think, involves the agent who gets on the bus and holds his badge up and basically says what we're here for, which I understand is a different fact than we have here in this case.

The government has tried to draw that distinction, but if you—on Page 1357, the paragraph that should have brackets 2 and 3 behind it—they talk about what the officer, Officer Perkins, in that case did. He held up his badge, he identified himself as an agent. He announced what he wanted to do. He announced what he was going to do.

And the court said, absent some other indication to bus passengers that they didn't have to cooperate, they did not have to consent, that we find under these circumstances most people aren't going to feel that they are free to ignore that. And I quote from the opinion that, "Most citizens, we hope, believe that it is their duty to cooperate with the police.

And indeed the Eleventh Circuit's observation has been borne out by the facts in the instant case because the officer has testified, and Mr. Simpson has testified, that the overwhelming number of people do in fact cooperate and consent. The percentage that my colleague has given you—

THE COURT: And I take it that's from the math department at Georgia Tech.

MR. CLARK: She helps, Your Honor.

MR. BLOW: I haven't done the numbers, but I'll rely [97] on it as being accurate as alleged.

It is overwhelming, certainly statistically significant, that the vast majority of people do, under these circumstances. The officer has testified that he had no other legitimate reason to detain these people, a factor noted in Washington; that he could have told the people they had a right to consent, it would have taken only a matter of three to five seconds; that he has in fact done that in the past and that there was no reason for him not to have done it this time.

I will not try to tell the court that I have done an exhaustive research of the Eleventh Circuit, but based on the citations that I have found, and that Mr. Simpson has pointed to, I find one bus case affirmed by the Eleventh Circuit. That's United States vs. Fields, and the significant thing about that case, as in Bostick, is

that they told him he had the right not to consent. He had the right to refuse.

Now—

THE COURT: Of course Fields was decided before Bostick, right?

MR. BLOW: Well, it was decided in '90. Bostick was decided in '91, decided June of '91. Appeal was decided August of '90.

THE COURT: I was looking at the numbering on the report.

MR. BLOW: So the—certainly I think the argument is [98] that the Eleventh Circuit, the approach they took pre-Bostick and the approach they've taken post-Bostick has not varied substantially.

It is a coercive environment that you put a person into, that a reasonable person—the Eleventh Circuit has already found that a reasonable person on a bus in that fashion—that that's a coercive environment, and that most people are in fact going to cooperate. So the simple fact that someone does is not in and of itself controlling. It's to be expected.

The officer in this case identifies himself. He shows his badge, his authority. Either it's hanging around his neck or he flashes it in his hands. He tells them what he's there for and what he wants to do. He asks for their cooperation, but doesn't give them a chance to answer, and goes straight into, "Do you have any bags?" And then, "May I search them?"

And then one thing goes from there to the other. The officers are on the bus. He wants to talk about the front of the bus and the back of the bus. They start their search from the back. They've learned. Some of

the earlier cases that got reversed they started at the front. So they started at the back, but they put an officer up at the front. His explanation, his rationale is that that officer is there to observe the passengers and to protect him. Fine. That may well be his subjective rationale. But for the passengers on the bus, there's an officer in the back, there's an officer up [99] there at the front. My—I'm restricted. I don't know—what am I going to do here?

He wants to give you the impression that this officer's presence—because he's in the seat, they're free to leave and so forth, or—and in fact I think indicated that the people can't necessarily see him. But the fact of the matter is—

THE COURT: But this was nobody in a blue uniform standing there with an AK-47 or anything like that. And—

MR. BLOW: It was an officer with a badge.

THE COURT:—and knock me out of the way if you can, Mr. Passenger, and get off of the bus. There's none of that, Mr. Blow.

MR. BLOW: I don't think that's required, Judge. He's an officer with a badge. That badge conveys authority to the vast majority—

THE COURT: Is there any testimony whether he was brandishing a badge, or who in the heck he was?

MR. BLOW: Officer Lang testified they all had their badges out, either in their hands or hanging around their neck, he didn't remember which, but they all had their badges.

THE COURT: I'm sure they had them on their person.

MR. BLOW: But the officer is up front where he can see the passengers, the passengers can see him. Kind of like these little bumper stickers you see on the side of the tractor-trailer rigs that say, "If you can't see my mirrors, I [100] can't see you in my mirrors." Well the same thing. If he can see them, he can make eye contact. Lang said he's watching facial reactions. Then the people whose faces he's watching can watch him.

THE COURT: The only testimony I heard here was that when they got on, they got on right with the passengers, so that they could have been mistaken for other passengers. I don't know any—there's no evidence to the contrary. They're in civilian clothes. And whether they had it around their—on a chain or in their hands, those little wallet fold-up things, I guess with a badge.

MR. BLOW: With all due respect—

THE COURT: Unlike some of these other cases—go ahead.

MR. BLOW: In response to your question, the officer said that the bus driver finished up his manifest and so forth, stepped off the bus and then said, "It's all yours." All right, so the passengers were already on and seated. The bus driver had gotten his tickets or whatever he was going to do. So they weren't getting on with the rest of the passengers. The bus driver who has been on the bus gets off the bus. Three men with badges get on the bus.

Again, we're back to the situation that the Eleventh Circuit has cited, again, that under these circumstances in this type of an environment, that it is to be expected that [101] most people are going to feel they have a duty to cooperate. The officer agreed that most of

these people felt they had a duty to cooperate and did in fact cooperate.

But that's the problem, because most people, or reasonable people, are going to be expected to feel that way, there is an obligation, a burden, when you get into this kind of environment to then go a step further, and that obligation is to make sure they understand, if you're going to do it in that type of environment, that they have the right to refuse, or the right not to consent, and that there will be no cost for that.

Now there may not be a cost. Maybe they do in fact let people walk off, or refuse, I don't know. I'll take his word for it. But the fact of the matter is, the people on the buses don't know that. All they know is we've got three officers that have gotten on the bus, they're flashing badges at me. I can't go anywhere. That's a course of environment that the Eleventh Circuit has repeatedly rejected. And the only time they haven't rejected it was when the defendant was affirmatively told he had a right to refuse.

THE COURT: Anything?

MR. SIMPSON: Your Honor, what Mr. Blow fails to recognize is that both Guapi and Washington refer to the specific circumstances of those cases where there is a general announcement, a show of authority. And I'm not going to read you what's quoted in our opposition and what is in the cases [102] that I know Your Honor has looked at. They specifically and repeatedly say, there is no per se rule, but once you've made a general announcement and once you've given the show of authority, then there needs to be some positive indication they can decline.

That isn't what happened here. There wasn't any—and Your Honor will have to judge for yourself, but there isn't a show of authority. What there is is the officer identifies himself, and probably you can gather from the rest of his testimony he puts people at ease by letting people know that he's okay, he's not a threatening person.

The only two factors in this case which defendants can point to which in any way support the suggestion that there was some coercion here, or some duress here, or something other than total voluntarily, is one, it's on a bus, and two, they were not explicitly advised they had the right to refuse consent.

Well, the Supreme Court in Bostick said that there's no per se rules on a bus. The Supreme Court in Schneckloth vs. Bustamonte said, you don't have to—per se have to advise them that they have the right to refuse. The lesson of those cases, the lesson of the Eleventh Circuit cases and the other Supreme Court is, you look at the totality of the circumstances, and when you look at the totality of the circumstances, this is as benign a contact as you can imagine.

[103] If anything, Officer Lang, you may think he's a real slick guy and you wouldn't want him around a young lady you were interested in, but this is a matter of him being so friendly that people want to help him, and presenting himself in such an amiable fashion that people go along with it. And Guapi distinguished its own facts from facts very much like this when it said, it is not unusual to be approached by a fellow traveler on a bus or in an airport, and therefore there is no reason to believe that when police officers engage in similar behavior that they are coercing or intimidating citizens.

And it distinguishes its own facts, the same cannot be said for a uniformed person at the front of a Greyhound.

This case the not Guapi. This is not Washington. Your Honor is required to assess the totality of the circumstances, and the totality of the circumstances tell you, this is friendly contact. This isn't overbearing. This isn't threats, this isn't a display of weapons.

The phrase "duty to cooperate." Mr. Blow said four or five times in compound questions until he finally got at least part of the question agreed to, where Officer Lang said he didn't do anything to suggest there was a duty to cooperate. He said, "I would like cooperation." And lo and behold, the people cooperated. He made a reasonable request and people responded. And the court says, "That's fine." And that's where we are.

[104] THE COURT: All right. In this case I find that there was no violation of the defendant's constitutional rights, and that the police conduct was not coercive and that the search was therefore voluntary on the part of the Defendants Brown and Drayton. And I base that upon my consideration of the totality of the circumstances, and of course having heard the only witness in this case testify.

I don't think the facts are much in dispute. It's very clear that the bus was traveling from south to north through Tallahassee going somewhere either north or west, perhaps both, out of Tallahassee. This was a stop along the way. The passengers were required to exit the bus by the bus company. And then after the passengers got back on board—that is those who were continuing on their travels and those who were boarding new in Tallahassee boarded—then the three

officers, Mr. Lang, Mr. Hoover and Mr. Blackburn, boarded the bus.

Again, Hoover apparently at the front, then kneeling, as I guess I can—on his knees, in the driver's seat, looking aft, to check and make sure that there was no threat to the officers whose backs were turned. Mr. Blackburn goes to the back of the bus and—to check the restroom and the passenger on that rear bench seat.

Mr. Lang, who testified, starts working the bus from the back forward. In the—I guess what might be the first full row of seats, the defendants, Mr. Brown and Mr. Drayton, were [105] seated. The badge was either pulled out from his chain around his neck or handed to him by Mr. Lang. He was walking forward and leaning over from the rear of the passengers, rather than standing in the aisle blocking their way.

There was no general announcement when these officers got on the bus. There was no brandishing of the badges by these officers when they boarded the bus. They came on and they could have or could not have been—and I don't think it makes any difference—but easily could have been distinguished or indistinguishable from other passengers who may have boarded late. But whatever, they were the last ones on the bus.

And as in Bostick, the people who were on that bus were on there because they wanted to be on that bus. They were going someplace from Tallahassee. It was not as if the police or the bus company herded them, did a sweep through the lobby of the terminal and put everybody on the bus and then let the police come on board and work the bus. These people were on because they wanted to be on the bus.

So if, as in the words of Florida against Bostick—the Supreme Court case, 501 U.S. 429, decided June 20, 1991—Mr. Brown and Mr. Drayton were in no different position than Bostick was, who was on that bus, and the bus was ready to leave. So we start from that premise. They were on that bus, they were in that confined location by their choice.

The officer—Investigator Lang did not tell him, and he [106] does not make that suggestion here, nor does the government, that he was required—he does not tell them that they don't have to consent.

And I think that's what Bostick says, at least that's what the Court of Appeals of the Eleventh Circuit, Judge Roney, who wrote both of these opinions for the majority, says: "Although we reject the notion of a per se rule requiring bus passengers to be informed of their constitutional rights"—and then it goes on say, we have to—except for the use of the word "police officers" in Guapi, and the use of the word "federal agents" in Washington, that paragraph of Judge Roney's opinion is identical. It contains the same language. It came out of the same word processor, and well it should because that's how—that's, I guess, a correct statement of the law.

And so we are then—whatever we may think about that rubric, whatever we may think that it might be easier on these cases if the police had taken the three to five seconds say, "Now of course you folks don't have to consent, it's entirely up to you," there's nothing in the law that says they have to do that. So we look at the totality of the circumstances.

This is an officer who approaches these men from the back. There is no one standing in their way. He is

coming to them from their rear. He leans over—and it's obvious that they can get up and leave, as can the people ahead of them. If his speech is as it was on the stand, there is nothing in his tone [107] of voice that suggests that this is some abusive bully type individual. He is a black or African American man talking to two other black—black or African American men on this bus. He leans forward, and either from his chest chain or from his wallet shows them his badge and explains to them that he wants to—as his testimony was, that he's concerned about drugs and firearms.

And everything that's said, everything that took place between Officer Lang and Mr. Drayton and Mr. Brown suggests that it was cooperative. There was nothing coercive, there was nothing confrontational about it. There is no evidence that there was somebody then standing in the aisle and say, you know, come if you want to.

And so none of the circumstances that existed in Guapi, G-U-A-P-I, U.S. against Guapi, 144 F.3d 1393, decided by the Eleventh Circuit on June 29, 1998—that's 144 F.3d 1393—nor in U.S. against Washington, decided by the same Eleventh Circuit, 151 F.3d, 1354—that's 151 F.3d 1354—decided by the Court of Appeals on August 28th, 1990, nothing in either—this case is unlike both of those cases.

Here there was no general announcement. Here there was nobody standing at the front of bus. Here the passengers were already on, ready to leave. There was nothing coercive and nothing in what Officer Lang said or did or the other officers did on that bus that would suggest to a reasonable person that [108] they were not free to leave.

And so they're handing over their luggage, their on-board luggage. Their consent to the pat down leads me, as I've indicated, to believe that there was no violation of their constitutional rights. They consented to this search. I find that the government has met its burden on this case. I think that the government's response on Pages 16 and 17 fairly well sets forth the facts and the law that applies to the facts in this case.

Therefore, the evidence was lawfully seized by the police, and therefore the—and would be admitted in a trial of this case. And the motion to suppress is denied as to both defendants. And if upon reflection I need to put anything more on the record concerning my basis for this, I would allow myself to do so, but I think I've fairly well stated the basis for my decision.

Yes, sir.

MR. BLOW: Your Honor, if I may, based on the police report that was given to us during the recess, after the officer testified on direct, it indicates that he asked for consent to search for a weapon. I would seek to expand my objections to the search on this basis, that they exceeded the scope of the consent given by searching—then having him search for drugs and so forth.

MR. SIMPSON: And the response to that is the officer [109] didn't look anyplace a weapon couldn't be concealed and didn't go any further in the search than would be necessary to find a weapon, by the testimony you heard.

THE COURT: If that's the basis, I think the officer's testimony was that—and maybe in response to a direct question that you asked him, Mr. Blow, down there when you felt that hard object, and—I think somebody

followed up with a question, it wasn't like a body part, like the scrotum or anything like that, he said, yes, they found drugs and weapons down there, and that's a place to hide them.

So if that is the point of that objection, and if indeed he said that he was looking for weapons and alas found drugs, or was looking for drugs and a weapon appears in a place, that does not vitiate that search. It does not make that evidence of contraband inadmissible and does not alter my findings in this case.

So the motions to suppress are respectively denied and the—this matter at trial will—the evidence will be received in evidence.

All right, anything further? When is this case set for trial, Mr.—

MR. SIMPSON: 13th of April, I believe.

DEPUTY CLERK: Yes, sir.

THE COURT: All right. Anything further?

MR. SIMPSON: No, sir.

[110] THE COURT: Court is adjourned.

(Proceedings concluded at 12:05 p.m.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

_____ _____

LISA GIROD JONES, RPR, RMR
Official Court Reporter

Date

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

4:99CR15-WS

THE UNITED STATES OF AMERICA, PLAINTIFF

v.

CHRISTOPHER DRAYTON, DEFENDANT

TRANSCRIPT OF TRIAL

BEFORE THE HONORABLE WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE AND
A JURY

APPEARANCES:

For the Plaintiff: P. MICHAEL PATTERSON
U.S. Attorney
By: MICHAEL T. SIMPSON
Assistant U.S. Attorney

* * * * *

For the Defendant RANDOLPH P. MURRELL
Federal Public Defender
BY: WILLIAM R. CLARK
Assistant Federal Public Defender

* * * * *

[10] RUFUS R. LANG, GOVERNMENT WITNESS, DULY SWORN.

DIRECT EXAMINATION

BY MR. SIMPSON:

Q. How are you employed, Mr. Lang?

A. Police investigator with the Tallahassee Police Department.

Q. What is your current assignment through the police department?

A. I'm currently assigned as a narcotic interdiction investigator with the narcotics unit.

[11] Q. How long have you been in narcotics?

A. Approximately ten or 11 years.

Q. How long have you been with the police department as a whole?

A. Thirteen years.

Q. Were you working for the police department back on the 4th of February of this year?

A. Yes, I was.

Q. And did you have occasion to go to the Greyhound bus station that day?

A. Yes, I did.

Q. We're talking about the facility just a couple blocks north of here?

A. Yes.

Q. And would that be involving a drug interdiction program?

A. Yes, it would.

Q. Please take a few minutes and tell the ladies and gentlemen of the jury what the drug interdiction program is and how y'all operate.

A. There's three investigators, myself and two of my coworkers, and one of the guys have the drug dog.

What we do is go down to the bus station during the busiest times, where all the buses are coming to the bus station, and we sit around and observe people. We usually—we're looking for things out of the ordinary, people acting out of character. We basically [12] check the major source cities, places like Miami, and source cities coming from out of the west, like Houston or Texas, for marijuana, and from Miami we check for cocaine.

What we do is we observe passengers get on the bus, acting out of character. We board the bus, not hindering anybody from leaving or getting on and off the bus. We're very friendly. We make contact with people and not hinder them from getting on and off the bus. Friendly contacts, giving them—asking for their cooperation in reference to us talking with them. And we ask them reference to are they carrying any illegal contraband in or on the bus. And usually we get permission to check their luggage, or permission to have conversations with them, and we determine whether they have narcotics or drugs or alcohol, or weapons, while they're traveling on the bus. And we work the same way at the airport through verbal contact, consensual contacts. And that's pretty much the way we carry out our job through the day.

Q. Does the bus station know that the police department is conducting these checks?

A. Yes, they do.

Q. That's all right with the bus station?

A. Yes.

Q. Do you just pick on black people or Hispanic people, or do you—is—I guess the question is, is race one of the criteria that you use in deciding to talk to people?

[13] A. No, if you board the bus and if you're acting strange—we talk to anybody on the bus regardless of race, color. Basically we're on the bus for a short period of time and make contact with a few people on the bus, and if you agree to talk to us, we'll talk to you. If you don't, we don't.

Q. Let me ask you, are there occasions when you don't have any particular suspicious behavior but you still talk to people anyway?

A. Yes.

Q. And you talked about people from source cities. What if you get on the bus and find somebody that's from Tallahassee?

A. Usually we don't—we have talked to them, but we make it a practice not talking to them because it's originating right here in Tallahassee, and they're either leaving here or going somewhere else. We try to spend most of our time—which is brief—with people coming from source cities.

Q. How about somebody coming from Canada?

A. Yeah, we would talk to them too.

Q. And getting back to the 4th of—oh, how do you dress when you do these checks?

A. We dress casual, jeans, T shirts, flannel shirts.

Q. Okay.

A. Just plain clothes.

Q. Do you carry a weapon?

A. Yes, I do.

[14] Q. Is your weapon visible so that someone would know it was there?

A. No. We have on—like if I have on jeans or a shirt, I usually wear a flannel shirt that's bigger than the shirt I have on, that covers up my weapon, where you can't see it when I board the bus. It's out of their view. And I have a badge, usually around my neck, or I have it in my hand.

Q. Now let's go back to the 4th of February of this year. When you first caught sight—did there come a time that day when you saw Mr. Drayton and Mr. Brown?

A. Yes, I did.

Q. And when you first saw them, were they on a bus or not on a bus, or what was going on?

A. I observed them inside the terminal and I observed them again when they boarded the bus.

Q. About what time of day is this?

A. Noon time, around noon.

Q. Was there anything about them that caught your attention?

A. Yes, at the time it was not very cold, and they were wearing what I—to my attention I thought was pretty warm clothes for the time, for the weather that particular day, rather.

Q. Was there anything about their trousers?

A. Yes, their pants were very baggy, loosely fitting on their person.

[15] Q. Why did that catch your attention?

A. Because it's a normal way people, when they're trying to conceal something on their body, you can easily hide it with baggy clothes.

Q. And I'm sorry, I believe you said you saw them get on a bus?

A. Yes, I did.

Q. And could you tell from what's posted on the bus or otherwise where that bus was going?

A. Yes, it was headed up north—it was headed to Detroit is where it had the final destination, but it was headed up north.

Q. What did you do?

A. We boarded the bus, myself and Investigator Blackburn and Investigator Hoover. We proceeded to the very back of the bus.

Q. Does anybody not go to the back of the bus?

A. No, we always proceed to the very back. Investigator Hoover stops at the front, and he's observing people from the outside, just for our safety, while we're on the bus, out of the aisle and out of the way of everybody.

Q. So just you and Mr. Blackburn go to the back?

A. Yes.

Q. What happens?

A. We proceed to the very back of the bus and we make contact with the very first person at the very rear of the bus, we make contact with that person. And while we're on the bus we try to [16] put a piece of luggage with everybody that's on the bus. Meaning that by simply asking, sir, is this your luggage above your head, or so forth. Investigator Blackburn spoke with the last passenger on the bus. I stood kind of out of the way and waited until he was finished. At that

point in time, I proceeded to work my way back up the bus by making contact with the passengers.

Q. Do you recall whether you spoke to anyone before you got to Mr. Brown and Mr. Drayton?

A. Yes, I did.

Q. Tell us about that.

A. I spoke with a passenger—if I'm not mistaken, if not directly behind to the right of—I spoke with a passenger and asked them did they have any luggage above their head. He said yes. I asked if he mind if I checked it. He gave me permission to check it. I didn't find any contraband in reference to where I was hunting. And before I asked, I also—you know I have my badge in my hand, and I lean over to him and tell him, "I'm Investigator Lang with the Tallahassee Police Department. We are conducting bus interdictions making sure there's no guns, weapons, drugs or alcohol on the bus. We would like for your cooperation." And then I will further say, "Do you have anything like that on the bus?" And people say no or yes, or no or yes, whether they'll talk to us or not.

Q. Do you ever have people that don't want to talk to you?

[17] A. Yes, I've had people to refuse.

Q. What happens to them?

A. Just tell them have a nice day, and I continue to work my way down the aisles.

Q. Did you ever have people that when they hear you talking about the police department get up and get off the bus?

A. Yes, we've had people get up and walk off the bus.

Q. What do you do then?

A. Just let them go, walk off the bus. We've had people get up, when they hear me mention what I'm doing, they walk off the bus. But my attention is not directly focused at them. If they wanted to get off, they was free to get off.

Q. After you check this other passenger's luggage, what happened then?

A. I proceeded to Mr. Brown and Mr. Drayton.

Q. Do you recall which one was on—are they beside each other, across the aisle, or how are they set up?

A. Seated right next to each other on the driver's side and close to the rear of the back of the bus. Mr. Brown is sitting next to the window, and Mr. Drayton is sitting in the aisle.

Q. Do you see either of those people here in the courtroom today?

A. Yes.

Q. Which one?

A. Mr. Drayton.

[18] Q. And would you describe how he's dressed and where he's seated?

A. He's seated in between the two white males. He's the black male sitting in between them at the table.

Q. Now, what happens when you—first of all, do you get all the way up even with Drayton and Brown, or how do you approach them?

A. Approached them from the rear of the seat so that I'm not blocking the aisle if they wanted to get up and walk out.

Q. What do you say to them?

A. I explain to them who I was with my badge, inform them what I was doing, and I ask if they have any luggage on the bus.

Q. How did they react when you asked them that?

A. Both Mr. Brown and Mr. Drayton both anxiously pointed above their head to the luggage that they had, to the luggage above their head.

Q. Talking one piece or more than one piece?

A. It was one piece of luggage.

Q. Both of them?

A. Yes.

Q. What happened after that he identified it?

A. I asked could I search the bag, and Mr. Brown—well they both—Mr. Brown nodded yes.

Q. What did you do then?

[19] A. I took the bag from above, and I handed it back to Investigator Blackburn who was standing behind me. And at this point in time I turned back around to Mr. Brown and asked if he minded if I checked his person for weapons. And at the time that I asked him, he said sure, and he opened up his jacket and he began taking things out of his pocket. He took a cell phone out and other things out of his pocket. And I reached over and asked him if he mind if I patted him down. I began to pat him down from up here around the waist. And I got to this area around his waist—

Q. If you could for a moment, if you'll stand aside from the witness stand so the jury can see what you're doing with your hands, and show them how you patted down?

A. I started in the waist area and I patted right to here, about right along in here, and I felt two unknown objects—well several unknown objects that I knew wasn't part of his anatomy.

Q. You're holding your indications on the front part of the thigh?

A. Yes, right here.

Q. About the length where your hands would naturally fall if you let them hang from your shoulders?

A. Yes.

Q. You can resume your seat on the witness stand. Now, are you having to reach across Mr. Drayton to pat down Mr. Brown?

[20] A. Yes, I was.

Q. What happens when you finally finished?

A. I asked Mr. Brown to stand up. And he stood up and turned his back to me. And I asked him to step out in the aisle. And when he stood up in the aisle, Investigator Hoover, I motioned for him to come and take Mr. Brown off the bus.

Q. And do I assume correctly that Mr. Brown is arrested at that point?

A. Yes.

Q. What do you do with Mr. Drayton?

A. I turned to Mr. Drayton and I asked him if I may check his person also, and he gave me permission, yes, and I checked his person the same way as I checked Mr. Brown. And when I got into the same area, I felt an unknown object on him also. So I asked him to stand up, and I placed him under arrest at that time.

* * * * *

[28] Q. How many people are on these buses that you see on an average basis?

A. Excuse me, you mean passengers on the bus?

Q. Passengers, yeah.

A. It varies from—anywhere from six to 47.

* * * * *

[31] [Q.] * * * How many of those people, Officer Lang, last year, told you they didn't want to be searched?

A. Six or seven at the most.

Q. Out of 18,000?

A. If you want to say—if I talked to 18,000. I see a lot of people, but I wouldn't say I talk to 18,000.

Q. You don't talk to everybody, you only talk to certain people?

A. Exactly.

Q. And Mr. Drayton was one of the people you talked to because he had loose clothing on?

A. Not necessarily true.

Q. Because he had loose clothing and a heavy jacket?

A. Yes.

Q. And this took place on February 4th?

A. Yes.

Q. And where was he going?

A. To Indiana.

Q. And what was the weather like February 4th in Indiana? Was it snowing?

A. I'm not aware what it was like in Indiana, but in Tallahassee it was kind of warm.

Q. Well, in February is the weather any different in Indianapolis than it is in Tallahassee?

A. Yes.

* * * * *